

APPENDIX

Supreme Court, U. S.
FILED

MAY 28 1978

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-1202

STATE OF MICHIGAN,

Petitioner,

—v.—

HAROLD W. DORAN

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MICHIGAN

PETITION FOR CERTIORARI FILED FEBRUARY 27, 1978
CERTIORARI GRANTED APRIL 17, 1978

TABLE OF CONTENTS

Docket Entries—Bay County Circuit Court	1a
Docket Entries—Michigan Court of Appeals (Docket No. 28507)	7a
Docket Entries—Michigan Court of Appeals (Docket No. 30516)	9a
Docket Entries—Michigan Supreme Court (Docket No. 58698)	11a
Docket Entries—Michigan Supreme Court (Docket No. 59193)	13a
Action in 74th District Court, December 18, 1975	14a
Action in 74th District Court, December 26, 1975	14a
Transcript of Arraignment (pages 1-5) held January 12, 1976	16a
Mittimus In Default of Bail for Sentence, Examination or Trial, January 12, 1976	20a
Action in 74th District Court, February 5, 1976	22a
Order of Nolle Prosequi dated February 5, 1976	23a
Arizona Complaint	24a
Arizona Warrant for Arrest	26a
Declaration in Support of Arrest Warrant	27a
Affidavit of Thomas C. Bradley	29a
Michigan Complaint	30a
Michigan Warrant	32a
Arizona Requisitions	34a
Michigan Governor's Warrants	44a
Petition for Writ of Habeas Corpus filed March 26, 1976	47a

	Page
Order for Commitment entered April 14, 1976	51a
Application for Leave to Appeal to the Court of Appeals filed April 28, 1976	53a
Complaint for Writ of Habeas Corpus filed April 30, 1976	60a
Amended Arizona Warrant and Complaint	62a
Court of Appeals Order Denying Application for Leave to Appeal filed May 5, 1976	68a
Circuit Court Appointment of Attorney, May 5, 1976	70a
Delayed Application for Leave to Appeal filed July 28, 1976	71a
Excerpts from Habeas Corpus Hearing Held August 13, 1976 (42-51, 28-30)	82a
Order Denying Petition for Writ of Habeas Corpus, August 18, 1976	92a
Circuit Court Appointment of Attorney, August 25, 1976	94a
Court of Appeals Order dated November 18, 1976, Dismissing Petition for Writ of Habeas Corpus	95a
Michigan Supreme Court Order Granting Application for Leave to Appeal filed November 3, 1976	97a
Michigan Supreme Court Opinion filed October 4, 1977 ..	99a
Michigan Supreme Court Final Process issued October 4, 1977	118a
Application for Rehearing filed October 24, 1977	120a
Objections to Application for Rehearing filed November 2, 1977	122a
Michigan Supreme Court Order denying Rehearing filed November 29, 1977	131a

Docket Entries—Bay County Circuit Court

1a

IN THE MATTER OF:
HAROLD WILLIAM DORAN,

VS.

STATE OF ARIZONA & GOVERNOR OF THE STATE OF
MICHIGAN & PROSECUTING ATTORNEY OF BAY
COUNTY & BAY COUNTY SHERIFF,

WILLIAM CAPRATHE,

Public Defender

March 12, 1976	Verified Complaint for Declaratory Judgment
March 12, 1976	Affidavit of William Caprathe
March 17, 1976	Proof of Service
March 17, 1976	Proof of Service
March 17, 1976	Order to Show Cause for Temporary Inj. & Ex-Parte Restraining Order
March 17, 1976	Affidavit of Financial Condition
March 17, 1976	Affidavit for Suspension of Fees
March 17, 1976	Order suspending fees
March 17, 1976	Notice of Hearing
March 17, 1976	Praecipe (3-22-76) 9:30 A.M.
March 19, 1976	Proof of Service
March 23, 1976	Writ of Habeas Corpus
March 23, 1976	Praecipe (3-29-76) 9:30 A.M.
March 26, 1976	Petition for Writ of Habeas Corpus & Commitment
March 26, 1976	Praecipe (3-29-76)

2a

Docket Entries—Bay County Circuit Court

April 13, 1976 Order to Quash
 April 19, 1976 Order for Contempt
 April 28, 1976 Appointment of Attorney
 April 28, 1976 Application for leave to appeal
 April 28, 1976 Brief in support
 April 28, 1976 Brief in support
 April 28, 1976 Motion for Bond
 April 28, 1976 Motion for Stay of Proceedings
 April 28, 1976 Motion for immediate consideration
 April 28, 1976 Affidavit in support of motions
 April 28, 1976 Motion for petition asking Superintending Control
 April 28, 1976 Arguments
 April 22, 1976 Praecipe (5-3-76)
 April 22, 1976 Praecipe (5-3-76)
 April 30, 1976 Complaint for Writ of Habeas Corpus
 April 30, 1976 Proof of service
 May 7, 1976 Petition for appointment of attorney
 May 7, 1976 Affidavit
 May 7, 1976 Appointment of attorney
 May 10, 1976 Transcript (Arraignment)
 May 10, 1976 Transcript (Hearing February 2 & 5)
 July 29, 1976 Amended Complaint for Writ Habeas Corpus
 August 18, 1976 Order denying Writ of Habeas Corpus

3a

Docket Entries—Bay County Circuit Court

August 18, 1976 Proof of Service
 August 25, 1976 Appointment of Attorney
 August 26, 1976 Notice of Hearing
 August 26, 1976 Motion for Bond
 August 26, 1976 Praecipe (8-30-76)
 August 27, 1976 Stenographer's Certificate
 August 30, 1976 Letter
 August 30, 1976 Proof of Service
 August 30, 1976 Notice of Filing Claim of Appeal
 August 30, 1976 Claim of Appeal
 August 30, 1976 Affidavit of Appointment of Counsel
 August 30, 1976 (Copy) Appointment of Attorney
 Sept. 1, 1976 Letter
 Sept. 9, 1976 Reporters notice of filing transcript
 Sept. 9, 1976 Transcript (Hearing)
 Sept. 9, 1976 Praecipe (9-13-76) 8:30
 Sept. 10, 1976 Motion to transfer Def. to Hosp. or Conv. Facility
 Sept. 28, 1976 Notice of Hearing
 Sept. 28, 1976 Motion for extension of Stay Ext.
 Sept. 28, 1976 Proof of Service
 Sept. 28, 1976 Praecipe (10-4-76)
 October 4, 1976 Transcript (Motion)
 October 14, 1976 Motion to set bond & transfer def. to hosp.
 October 14, 1976 Notice of hearing
 October 14, 1976 Praecipe (10-18-76) 8:30

4a

Docket Entries—Bay County Circuit Court

Nov. 23, 1976 Order from Court of Appeals
Dec. 2, 1976 Praecipe (12-6-76)
Dec. 2, 1976 Notice of Hearing
Dec. 2, 1976 Motion to set Bond & motion to transfer def. to Hospital, etc.
Dec. 9, 1976 Order
January 24, 1977 Order from Supreme Court
April 28, 1977 Praecipe (5-2-77)
February 3, 1977 Praecipe (2-7-77)
February 3, 1977 Notice of Hearing
February 3, 1977 Motion to set bond & Transfer Def. to Hosp.
April 29, 1977 Notice of Hearing
April 29, 1977 Motion to set bond, etc.
May 12, 1977 Order
May 26, 1977 Order from Supreme Court Order
May 26, 1977 Praecipe (5-31-77)
May 26, 1977 Motion to set bond, transfer def. to Hosp., etc.
May 26, 1977 Notice of Hearing
May 26, 1977 Memo in support of motion for Bond on Appeal
June 9, 1977 Praecipe (6-13-77) 1:30
June 16, 1977 Order
June 21, 1977 Defendant's Exhibit #1
July 28, 1977 Praecipe (8-1-77)

Docket Entries—Bay County Circuit Court

5a

July 28, 1977 Notice of Hearing
July 28, 1977 Motion to set bond
August 4, 1977 Order
August 11, 1977 Transcript (Motion 6-1-77)
Sept. 15, 1977 Sealed proceedings (Motion 6-1-77)
Oct. 6, 1977 Order from Court of Appeals

COUNTY OF BAY
STATE OF MICHIGAN } ss.

IN THE MATTER OF:

HAROLD WILLIAM DORAN

VS.

THE PEOPLE OF THE STATE OF MICHIGAN

I, Steven Toth, Clerk of said County of Bay and Clerk of the Circuit Court for said County, do hereby certify that I have compared the foregoing copy of DOCKET ENTRIES FILE # 76-207 with the original record thereof, now remaining in my office, and that it is a true and correct transcript therefrom, and of the whole of such original record.

[SEAL]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County, this 8th day of May A.D. 1978.

STEVEN TOTH, Clerk
By Dorothea Wiechec, Deputy

STATE OF MICHIGAN
COURT OF APPEALS

IN THE MATTER OF
EXTRADITION:

PEOPLE OF THE STATE OF
MICHIGAN

Plaintiff-Appellees

vs

HAROLD WILLIAM DORAN
Defendant-Appellant

No. 28507

L. Ct. No. 76-207-T

DOCKET ENTRIES

April 28, 1976	Application for Emergency Leave to Appeal filed
April 28, 1976	Motion for stay of proceedings—lower court
April 28, 1976	Motion for bond pending appeal
April 28, 1976	Motion for Immediate Consideration application for emerg. lv. to appear
May 4, 1976	Order granting Immed. Consider.; deny application for emerg. lv. to appear; deny stay of proceedings; deny bond

**In the Court of Appeals
Clerk's Office**

STATE OF MICHIGAN,—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of Docket Entries in People v Harold William Doran—CA# 28507 in said court in said cause: that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals, at Lansing, this 9th day of May A.D. 1978.

Ronald L. Dzierbicki /s/
Clerk

**STATE OF MICHIGAN
COURT OF APPEALS**

**HAROLD WILLIAM DORAN,
a/k/a TED FOSTER,**

Plaintiff

vs

**SHERIFF OF BAY COUNTY,
Defendant**

No. 30516
L. Ct. No. 76 207 T

DOCKET ENTRIES

August 30, 1976	Stenographer's Certificate filed
September 9, 1976	Notice of filing transcript
September 9, 1976	Complaint for Habeas Corpus Filed
October 28, 1976	Motion for stay of extradition
October 28, 1976	Motion for bond pending appeal
November 18, 1976	Order denying Order to Show Cause; dismissing complaint, denying motion for bond pending appeal and motion for stay of extradition

Michigan Court of Appeals

STATE OF MICHIGAN,—ss.
In the Court of Appeals
Clerk's Office

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of Docket Entries in Harold William Doran, a/k/a Foster v Bay County Sheriff CA# 30516 in said court in said cause: that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals, at Lansing, this 9th day of May A.D. 1978.

Ronald L. Dzierbicki /s/
 Clerk

Docket Entries—Michigan Supreme Court

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v 58698

HAROLD WILLIAM DORAN,

Defendant-Appellant

(Counsel Deleted)

APPEAL FROM COURT OF APPEALS #28507

County of Bay—Theiler

DATE	PROCEEDINGS
	1976
July 28	Delayed Application filed.
July 28	Motion for Immediate Consideration filed.
July 28	Motion for Stay filed.
July 28	Motion for Bond filed.
July 30	Court of Appeals, Circuit Court records filed.
Aug 9	Answers to Delayed Application, Motion for Stay, Motion for Immediate Consideration and Motion for Bond filed.
Nov 1	Immediate Consideration GRANTED, Application GRANTED, Bond and Stay DENIED.
	1977
Apr 11	Motion for Bond filed.
May 2	Motion to Advance Cause or for Bond, or for Peremptory Relief filed.
May 25	Immediate Consideration GRANTED, Motion for Bond REMANDED to Bay with instructions.
May 26	Motion for Leave to File Typewritten Brief filed.
May 27	Motion for Oral Argument filed.
June 6	Motions to type and replace later and for oral argument GRANTED.
June 9	Argued and Submitted.
June 28	Motion for Bond on Appeal filed.

June 28 Motion for Immediate Consideration filed.
 Oct 4 REVERSED and Defendant ordered RELEASED forthwith.
 Oct 4 Circuit Court and Court of Appeals records returned with remittitur.
 Oct 6 Motion for Bond DENIED AS MOOT.
 Oct 24 Application for Rehearing (typed) filed by Attorney General.
 Nov 2 Objections to Application for Rehearing filed.
 Nov 29 Application for Rehearing DENIED.
 1978
 Apr 21 Copy of Order of United States Supreme Court GRANTING CERTIORARI filed.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the docket entries in this cause; that I have compared the same with the original and that this is a true transcript and whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 9th day of May in the year of our Lord one Thousand nine hundred and seventy-eight.

Corbin R. Davis /s/
 Deputy Clerk

[SEAL]

HAROLD WILLIAM DORAN,
 a/k/a Ted Foster,
 Plaintiff-Appellant,
 v
 59193
 BAY COUNTY SHERIFF,
 Defendant-Appellee
 (Counsel Deleted)

APPEAL FROM COURT OF APPEALS #30516
 COUNTY BAY—Theiler

DATE	PROCEEDINGS
1976	
Dec 13	Application filed.
Dec 13	Motion for Immediate Consideration filed.
Dec 13	Motion for Consolidation filed.
1977	
Jan 19	Application and motions for immediate consideration and consolidation DENIED, extradition STAYED pending People v Doran #58698.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the docket entries in this cause; that I have compared the same with the original and that this is a true transcript and whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of May in the year of our Lord one thousand nine hundred and seventy-eight.

Corbin R. Davis /s/
 Deputy Clerk

*Action in 74th District Court***ACTION IN 74TH DISTRICT COURT DATED
DECEMBER 18, 1975**

STATE OF MICHIGAN
74TH DISTRICT COURT

**ACTION IN COURT
AND NOTICE OF HEARING**

Defendant—Doran, Harold Wm.; Govt. Unit—STAT 12/18/75; Case No. 5-4687 H; Address—Unknown; D.O.B.—6/2/24; Officer—Jablonski - BCPD; Date in Court—12/18/75; Recording No.—75/H/; Offense Charged —Rec. & Conc. 0/\$100.

(X) Arraignment; (Plea)—Mute; Bond—\$2,000.00 C/S.

Notes: Exp. Ops.—G—S.S.; Own Atty.

You Must Appear: 2:30 p.m. Dec. 29, 1975 for:
(X) Prelim. Exam.

So Ordered: (s) Arthur E. Higgs, District Judge

**ACTION IN 74TH DISTRICT COURT DATED
DECEMBER 26, 1975**

STATE OF MICHIGAN
74TH DISTRICT COURT

**ACTION IN COURT
AND NOTICE OF HEARING***Action in 74th District Court*

Defendant—Doran, Harold Wm.; Govt. Unit—STAT 12/18/75; Case No.—5-4687 H; D.O.B.—6/2/24; Officer—Jablonski - BCPD; Date in Court—12/26/75; Recording No. 75/H/273B.688; Offense Charged—Rec. & Conc. over \$100.00; re: Attorney.

Notes: Defendant retaining C. M. Gorte; Waives 12 days; Prelim adjourned to

You Must Appear: 2:30 p.m. January 23, 1976 for:
(X) Prelim. Exam.

So Ordered: (s) Arthur E. Higgs, District Judge

**TRANSCRIPT OF ARRAIGNMENT IN
74TH DISTRICT COURT**

**74TH DISTRICT COURT
STATE OF MICHIGAN**

PEOPLE OF THE STATE OF MICHIGAN VS. HAROLD WILLIAM DORAN	ARRAIGNMENT (Filed May 10, 1976)
---------------------------------------------------------------------------	--------------------------------------------

January 12, 1976
County Bldg.
Bay City, Michigan

Before—ARTHUR E. HIGGS, District Judge.

Recorded by—LORAINA JARCZYNSKI,
Official Court Recorder.

THE COURT: Mr. Doran your being charged that you were charged in Maricopa County, Arizona on a warrant issued by the Honorable Tim Weeks, Judge of the First Precinct Justice Court on January the 7th, 1976 with having on December 11, 1975 committed the offense of Felony Theft of a Motor Vehicle that based on the issuance of said warrant, affiant has probable cause to believe that the above-named person is guilty of said offense so charged against him in that he is a fugitive from justice, and has fled from said State of Arizona, and that the above-named person is now found in this State at the Bay County Jail and is liable under the Constitution and Laws of the United States and of this State to be delivered over upon demand of the governor of the State of Arizona to be removed to said State from whence he fled justice.

You have a right to have a hearing on this particular complaint sir. You also have a right to have an attorney represent you on this

MR. DORAN: I also have a right to have bond on that too your Honor.

THE COURT: Yes, ah hum.

MR. DORAN: I saw Gorte Friday.

THE COURT: Okay.

MR. DORAN: I'm suppose to get in touch with him, but I haven't heard from him yet.

THE COURT: Alright. Where abouts do you live sir?

MR. DORAN: Well my people all live in town. I can

THE COURT: No, but where do you live?

MR. DORAN: I don't I haven't been living in this State.

THE COURT: Well where do you stay?

MR. DORAN: Box 710 Arbor Street my father lives.

THE COURT: 710?

MR. DORAN: Ah hum.

THE COURT: You don't have a permanent address anyplace.

MR. DORAN: Well there if I want to use it.

THE COURT: I see—is there a telephone there?

MR. DORAN: Ah hum.

Transcript of Arraignment

THE COURT: What's the telephone number?

MR. DORAN: I don't know the number it's under William.

THE COURT: How old are you?

MR. DORAN: Fifty-one.

THE COURT: Are you married or single?

MR. DORAN: Single.

THE COURT: Do you own any real estate sir?

MR. DORAN: No real estate.

THE COURT: Okay, any car or anything of that nature?

MR. DORAN: Three of 'em.

THE COURT: Three cars?

MR. DORAN: Ah hum.

THE COURT: Okay. What kind are they?

MR. DORAN: Morris Miner, it's a collector's item. A Tempest Pontiac and

THE COURT: What year is the Tempest Pontiac?

MR. DORAN: Sixty-one.

THE COURT: Is that a collector's item too?

MR. DORAN: No, just a good running car.

THE COURT: And what about the third one?

MR. DORAN: Ford Mustang, 67.

Transcript of Arraignment

THE COURT: Okay, Mr. Gorte is going to represent you in this is he?

MR. DORAN: I'm sure he is.

THE COURT: Allright: I'm going to check you out sir. Your bond at the present moment is ten thousand dollars, and ah your hearing date, today's the 12th of January ah

MR. DORAN: I'm entitled to call witnesses on this extradition, am I not?

THE COURT: Yes sir, yes you are. Will be set ah for the 5th day of February and that will be at nine o'clock in the morning.

If the papers come through sir, then that would be moved up then.

MR. DORAN: How come they bring this in after a seventy-two hour date.

THE COURT: Pardon. On the ah, on the extradition sir, there's a certain amount of lag time and ah the Statute said, it's up to thirty days hearing date, so all the paper work can be done.

RECORDER'S CERTIFICATE

I, Loraine Jarczynski, Official Court Recorder in and for the 74th District Court of Michigan, do hereby certify that the foregoing is a true and accurate transcription of the electronic recording made at the time of the above Arraignment, and is all of the same.

Lorraine Jarczynski /s/
Official Court Recorder
74th District Court
State of Michigan

74th District Court Mittimus**74th District Court Mittimus****STATE OF MICHIGAN — THE DISTRICT COURT
74th JUDICIAL DISTRICT**

County of Bay

County Building, Center & Madison

Bay City, Michigan

People of the State of Michigan,

vs.

Harold Wm. Doran,

Defendant

Case No. 6-4023-7

Before Arthur E. Higgs, District Judge of the above named Court on 1/12/1975.

To the Sheriff of Bay County:

Whereas, the above said Defendant was on 1/12/, 1975, regularly brought before me, a District Judge charged with having committed the offense of fugitive from justice.

A violation of () as more fully appears by the record and files.

And said Defendant having demanded examination, and

Whereas, I, the said District Judge, thereupon required the said Defendant to enter in a recognizance, with sufficient sureties in the sum of \$10,000.00 C/S, for his appearance at:

1. CIRCUIT COURT ()

74th District Court Mittimus

2. DISTRICT COURT for examination (X)

3. DISTRICT COURT for trial ()

4. DISTRICT COURT for sentence ()

to be held on February 5, 1976, 1976, at 9:00, 2nd floor, to answer to said charge, and said Defendant having not offered sufficient bail; THEREFORE, In the Name of the People of the State of Michigan, you the said Sheriff, are hereby commanded forthwith to take the said Defendant and convey and deliver said Defendant to the City/County Jail.

And you are hereby required in the Name of the People of the State of Michigan, to receive the said Defendant into your custody in said Jail, and there safely keep until discharged by law.

Given under my Hand, and the seal on 1/12/, 1975.

[SEAL]

ARTHUR E. HIGGS /s/
District Judge

**ACTION IN 74TH DISTRICT COURT DATED
FEBRUARY 5, 1976**

STATE OF MICHIGAN
74TH DISTRICT COURT

**ACTION IN COURT
AND NOTICE OF HEARING**

Defendant—Doran, Harold Wm., Govt. Unit—STAT 12/18/75; Case No.—5-4687 H; D.O.B.—6/2/24; Officer—Jablonski - BCPD; Date in Court—2/5/76; Recording No.—76/H/; Offense Charged—Rec. & Conc. over \$100.00.

Bond—\$2,000.00 C/S.

Notes: G. Mullison, B. Caprathe.

You Must Appear: 9:30 a.m. Feb. 13, 1976 for:

(X) Prelim. Exam.

So Ordered: (s) Arthur E. Higgs, District Judge

**ORDER OF NOLLE PROSEQUI
IN DISTRICT COURT**

**REQUEST FOR DISMISSAL
Case Nos. 5-4687H**

NOW COME THE PEOPLE OF THE STATE OF MICHIGAN and hereby request that the (complaint and warrant) issued in the above matter charging the Defendant with "Receiving and Concealing over \$100"

be dismissed for the following reason(s): the Defendant is being extradited to Arizona on a charge of theft of a motor vehicle and the matters can be taken care of there.

(s) George B. Mullison
(Asst.) Prosecuting Attorney

Dated: February 5, 1976.

ORDER

At a session of said Court held in the Courthouse in the City of Bay City, County of Bay, Michigan on the 9th day of February, 1976.

PRESENT: HONORABLE ARTHUR E. HIGGS,
DISTRICT JUDGE.

UPON READING AND FILING THE ABOVE REQUEST FOR DISMISSAL, IT IS HEREBY ORDERED that the same be and it hereby is dismissed.

(s) Arthur E. Higgs
District Judge

cc: Public Defender's Office

ARIZONA COMPLAINT

IN THE JUSTICE COURT DR #75-120589 PPD
 EAST PHOENIX I PRECINCT, MARICOPA COUNTY
 STATE OF ARIZONA

STATE OF ARIZONA,	Plaintiff	"EXHIBIT A"
v.		No. 9204
HAROLD WILLIAM DORAN aka TED FOSTER	Defendant(s).	COMPLAINT (FELONY)

**THEFT OF MOTOR VEHICLE OR IN THE
ALTERNATIVE: THEFT BY EMBEZZLEMENT**

The complainant herein personally appears and, being duly sworn, complains (on information and belief) against HAROLD WILLIAM DORAN aka TED FOSTER charging that in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER took from WAYNE W. KAHLER a motor vehicle described as follows, to-wit: 1973 FORD PICKUP, 1/2 TON, F100, 1975 California License Number 188MGL, VIN 10GCQ67368, with the intent to permanently deprive WAYNE W. KAHLER of such motor vehicle, all in violation of A.R.S., Sec. 13-672(A) & (B), as amended 1975 and 13-1645.

**OR IN THE ALTERNATIVE: THEFT BY
EMBEZZLEMENT**

That in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER committed theft by embezzling from WAYNE W. KAHLER property, to-wit: One (1) 1973 FORD 1/2 TON PICKUP, F100 VIN 10GCQ67368, 1975 California License Number 188MGL, of the value of over \$100.00, all in violation of A.R.S., Sec. 13-681, 13-682, as amended 1972, and 13-688, 13-671, 13-661, 13-662, 13-663.

Richard Bishop /s/ Complainant C/L, Agency or Title PPD
 Subscribed and sworn to before me on 1-7-76.
 Mary Jo Dixman /s/ J.P.
 Magistrate Acting Title

It is requested that a (X) warrant, () summons be issued.

It is, is not requested that Defendant appear for fingerprints and photograph.

Norval Jesperson
 Deputy County Attorney

ARIZONA WARRANT
 IN THE JUSTICE COURT
 EAST PHOENIX No. I PRECINCT, MARICOPA COUNTY,
 STATE OF ARIZONA

THE STATE OF ARIZONA vs. HAROLD WILLIAM DORAN aka TED FOSTER Defendant(s)	No 9204 WARRANT FOR ARREST Exhibit B
---------------------------------------------------------------------------------------------------	---------------------------------------------------

TO ALL PEACE OFFICERS OF THE STATE OF ARIZONA: A complaint has been filed in this court against HAROLD WILLIAM DORAN aka TED FOSTER charging that in East No. I Precinct, Maricopa County, Arizona, on or about the 18th day of Dec. 1975, the crime of Felony, to-wit: THEFT OF MOTOR VEHICLE OR IN THE ALTERNATIVE: THEFT BY EMBEZZLEMENT has been committed.

I have found reasonable cause to believe that such offense(s) were committed and that the accused committed them, and reason to believe that the accused will not appear in response to a summons, or that a warrant is otherwise appropriate.

YOU ARE THEREFORE COMMANDED to arrest the accused and bring him before this court to answer the charges. If this court is unavailable, or if the arrest is made in another county, you shall take him before the nearest or most accessible magistrate. You may release him if he posts a secured appearance bond in the amount of dollars (\$).
 Jan. 7, 1976.

Mary Jo Dixman /s/
 Justice of the Peace

DECLARATION IN SUPPORT OF ARREST WARRANT

COUNTY OF MARICOPA, STATE OF ARIZONA
 DECLARATION IN SUPPORT OF ARREST WARRANT

"EXHIBIT C"

The undersigned hereby declares:

That he is currently employed as a peace officer for the City of Phoenix Police Department, Phoenix, Arizona.

That, pursuant to his employment he has been assigned to investigate allegations that HAROLD WILLIAM DORAN aka TED FOSTER did violate Section(s) §13-672(A)(B) and 13-1645.

That, pursuant to said assignment, your declarant:

1. Has contacted persons having knowledge of said offense and has prepared written reports and statements; and
2. Has received and read written reports and statements prepared by others, known by your declarant to be law enforcement officers.

All of which are included in the report consisting of 9 pages, which is presently an official record of this Department.

That each of these documents is presently an official record of a law enforcement agency.

WHEREFORE, your declarant prays that a warrant issue for the herein-above-named defendant, that he be dealt with according to law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of February, 1976, in Maricopa County.

THOMAS BRADLEY /s/
DECLARANT
Thomas Bradley # 456

City of Phoenix Police Dept., Phx., Az.
Address of Law Enforcement Agency
Subscribed and sworn to me this 3rd day of February, 1976.

BEVERLY R. PARISI /s/
Notary Public
My Commission Expires:
March 11, 1977

AFFIDAVIT OF THOMAS C. BRADLEY

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.

AFFIDAVIT
IN RE: EXTRADITION OF HAROLD WILLIAM DORAN
aka TED FOSTER
(Filed in the Justice Court, Maricopa County, State of Arizona)

"EXHIBIT D"

Thomas C. Bradley #456, being duly sworn does depose and say that he is the Officer in Criminal No. 9204 versus Harold William Doran aka Ted Foster; that he has been shown a photograph dated 12/18/75, marked Exhibit "D" by reference attached and made a part hereof; that the person photographed is the same person who was charged with the crime of Theft of Motor Vehicle OR IN THE ALTERNATIVE: Theft by Embezzlement, a felony within the jurisdiction of EAST PHOENIX I Justice Court Precinct, County of Maricopa, as charged in the above-numbered cause.

FURTHER deponeth sayeth not.
Dated this 3rd day of February, 1976.

THOMAS C. BRADLEY /s/
Thomas C. Bradley #456

Subscribed and sworn to by Thomas C. Bradley, before Beverly R. Parisi, a Notary Public, this 3rd day of February, 1976.

BEVERLY R. PARISI /s/
NOTARY PUBLIC

MY COMMISSION EXPIRES:
March 11, 1977

(Photograph deleted)

MICHIGAN COMPLAINT

STATE OF MICHIGAN
 IN THE DISTRICT COURT FOR THE
 74TH JUDICIAL DISTRICT

IN THE MATTER OF:
 HAROLD WILLIAM DORAN

COMPLAINT

STATE OF MICHIGAN } -ss-
 COUNTY OF BAY }

Eugene C. Penzien, Bay County Prosecuting Attorney, complains and says that he is informed and believes that the above-named person is charged in Maricopa County, Arizona on a warrant issued by the Honorable Tim Weeks, Judge of the First Precinct Justice Court on January 7, 1976 with having on December 18, 1975 committed the offense of Felony Theft of a Motor Vehicle; that based on the issuance of said warrant, affiant has probable cause to believe that the above-named person is guilty of said offense so charged against him in that he is a fugitive from justice, and has fled from said State of Arizona, and that the above-named person is now found in this State at the Bay County Jail and is liable under the Constitution and Laws of the United States and of this State to be delivered over upon demand of the governor of the State of Arizona to be removed to said State from whence he fled justice;

THEREFORE, COMPLAINANT PRAYS that the above-named person may be apprehended and held to answer this

complaint, and further dealt with in relation to the same as law and justice may require.

EUGENE C. PENZIEN /s/
 EUGENE C. PENZIEN
 Bay County Prosecuting Attorney

Taken, subscribed and sworn to before me at the City of Bay City in said County, this 12th day of January, 1976.

ARTHUR E. HIGGS /s/
 District Judge

MICHIGAN WARRANT

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE
74TH JUDICIAL DISTRICT

IN THE MATTER OF:
HAROLD WILLIAM DORAN

WARRANT

STATE OF MICHIGAN }
COUNTY OF BAY } -ss-

TO THE SHERIFF, THE DEPUTY SHERIFF, COURT
OFFICER, STATE POLICE OFFICER, OR
POLICE OFFICER:

WHEREAS Eugene C. Penzien, Bay County Prosecuting Attorney, has this date made and filed a complaint in the District Court for the 74th Judicial District that one Harold William Doran is charged in the State of Arizona upon a warrant issued by the Honorable Tim Weeks, Judge of the First Precinct Justice Court with the offense of Felony Theft of a Motor Vehicle

AND, WHEREAS said complainant has probable and just cause to believe, and does believe, that the said Harold William Doran is guilty of said offense so charged against him, and that he is a fugitive from justice, and has fled from said State of Arizona and that the said Harold William Doran is now found within this State, to-wit: at the Bay County Jail in said County, and is liable under the Constitution and Laws of the United States and of this State to be delivered over upon the demand of the governor of the State of Arizona to be removed to said State, from whence he fled from justice.

AND, WHEREAS, on examination, on oath, of the said Eugene C. Penzien by me it appears to me that said offense has been committed and that there is just cause to believe the said Harold William Doran to have been guilty thereof, and that the said Harold William Doran fled from the said State of Arizona after the commission of said offense, and is a fugitive from justice, and is now found within this State, to-wit: at the Bay County Jail in said County, and is liable under the Constitution and Laws of the United States and of this State to be delivered over upon demand of the governor of the said state from whence he fled from justice, and therefore:

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, you and each of you are commanded forthwith to arrest the said Harold William Doran and bring him before me to be dealt with according to law.

Arthur E. Higgs /s/
District Judge

Dated: Jan. 12, 1976

ARIZONA REQUISITIONS**STATE OF ARIZONA****REQUISITION****EXECUTIVE DEPARTMENT**

The Governor of the State of Arizona to his Excellency the Governor of the State of Michigan.

Whereas, It appears from the annexed application of the Maricopa County Attorney, State of Arizona, for requisition for the extradition of one HAROLD WILLIAM DORAN aka TED FOSTER, together with supporting papers which I certify to be authentic and duly authenticated according to the laws of this State, that HAROLD WILLIAM DORAN aka TED FOSTER stands charged with the crime of Theft of Motor Vehicle, or in the alternative, Theft by Embezzlement a felony under the laws of this State, committed in the county of MARICOPA this State; and it having been represented and satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State and has taken refuge and is now to be found in the State of MICHIGAN.

Now, Therefore, Pursuant to the provisions of the CONSTITUTION AND LAWS OF THE UNITED STATES, and existing treaty relations, in such cases made and provided, I do hereby request that the said HAROLD WILLIAM DORAN aka TED FOSTER be apprehended and delivered to PAUL BLUBAUM, Maricopa County Sheriff, or his authorized deputy as agent, who is hereby authorized to receive and convey the

A

said HAROLD WILLIAM DORAN aka TED FOSTER to the State of Arizona, here to be dealt with according to law.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Arizona to be affixed.

Done at Phoenix, the Capitol, this 11th day of February, in the year of our Lord, One Thousand Nine Hundred and Seventy-six and of the Independence of the United States of America, the two-hundredth.

Raul H. Castro /s/
Governor of the State of Arizona

By the Governor
Wesley Bolin /s/
Secretary of State

STATE OF ARIZONA
Executive Department

The Governor of the State of Arizona, to all to whom these Presents shall come, sends Greetings.

Know Ye, That I, Raul H. Castro, Governor of the State of Arizona, have authorized and empowered, and by these presents do authorize and empower PAUL BLUBAUM, Maricopa County Sheriff, or his authorized agent to receive from the proper authorities of THE STATE OF MICHIGAN HAROLD WILLIAM DORAN aka Ted Foster an alleged fugitive from justice, and to convey him to this State, to be dealt with according to law.

All persons are therefore requested to permit the said agent, at his own proper cost, to remove the said HAROLD WILLIAM DORAN aka Ted Foster and to transport him, unmolested, into this State, the said agent peaceably and lawfully behaving. The State is not to be liable for any expense incurred in the pursuit, arrest and return of said fugitive except as may be hereafter approved by executive authority.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Arizona to be affixed.

Done at Phoenix, the Capitol, this 11th day of February, in the year of our Lord, One Thousand Nine Hundred and Seventy-six and of the Independence of the United States of America, two-hundredth.

Raul H. Castro /s/
Governor of the State of Arizona

By the Governor:
Wesley Bolin /s/
Secretary of State

EXEMPLIFICATION

STATE OF ARIZONA }
County of Maricopa, } ss.

I hereby certify that the foregoing Complaint, marked "Exhibit A", and the foregoing Warrant of Arrest, marked "Exhibit B", are true copies of said Complaint and Warrant of Arrest, with the endorsements thereon, in the case of the State of Arizona vs HAROLD WILLIAM DORAN aka TED

FOSTER, Defendant, pending in the Justice Court of EAST PHOENIX I Precinct, County of Maricopa, State of Arizona.

Given under my hand this 4th day of FEBRUARY 1976.

Tim Weeks /s/
Justice of the Peace
East Phoenix #1 Precinct

STATE OF ARIZONA }
County of Maricopa, } ss.

I, WILSON D. PALMER Clerk of the Superior Court of Maricopa County, State of Arizona, (which is a Court of Record, in and for the said County having a seal) do hereby certify: That TIM WEEKS whose name is subscribed to the certificate of the annexed instrument, and thereon written was, at the time of the execution of said certificates, and now is the duly elected, qualified and acting Justice of the Peace of EAST PHOENIX #1 Precinct, in the County of Maricopa, State of Arizona.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of the said Superior Court of Maricopa County, State of Arizona, this 4th day of FEBRUARY, 1976.

Wilson D. Palmer /s/
Clerk of the Superior Court of
Maricopa County, State of Arizona.

STATE OF ARIZONA }
County of Maricopa, } ss.

I, ROBERT C. BROOMFIELD Judge of the Superior Court of Maricopa County, State of Arizona, do hereby certify that

WILSON D. PALMER is Clerk of the Superior Court of Maricopa County, State of Arizona (which court is a Court of Record, having a seal;) that the signature to the foregoing certificate and attestation is the genuine signature of the said WILSON D. PALMER as such officer; that the seal annexed thereto is the seal of said Superior Court; that said WILSON D. PALMER, as such clerk, is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand in my official character as such Judge at the City of Phoenix, County and State aforesaid, this 6 day of February, A.D. 1976.

Robert C. Broomfield /s/
Judge of the Superior Court of
Maricopa County, State of Arizona.

STATE OF ARIZONA }
County of Maricopa, } ss.

I, WILSON D. PALMER, Clerk of the Superior Court of Maricopa County, State of Arizona (which Court is a Court of Record, having a seal, which is annexed hereto,) do hereby certify that ROBERT C. BROOMFIELD whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the Superior Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and annexed the Seal

of the Superior Court, at my office, in said County, this 6th day of FEBRUARY 1976

Wilson D. Palmer /s/
Clerk of the Superior Court of
Maricopa County, State of Arizona.

TO HIS EXCELLENCY, RAUL CASTRO
Governor of the State of Arizona,

SIR:

Your petitioner, DEAN M. WOLCOTT, Supervisor, Complaint and Extradition Division, County Attorney of Maricopa County, State of Arizona, respectfully represents that one HAROLD WILLIAM DORAN aka TED FOSTER stands charged in due form by complaint under oath, duly filed in the Justice Court of EAST PHOENIX I Precinct, County of Maricopa, State of Arizona, and a warrant duly issued in accordance with the prayer of said complaint, a copy of which said complaint and supporting affidavit and a copy of said warrant being hereunto duly attached, marked "Exhibit A", and "Exhibit B", a copy of Warrant Affidavit marked "Exhibit C", a copy of Picture Affidavit marked "Exhibit D", respectively and made a part of this petition, as though fully set forth herein, with the crime of THEFT OF MOTOR VEHICLE - OR IN THE ALTERNATIVE - THEFT BY EMBEZZLEMENT the same being under the laws of this State a felony, committed as follows, to-wit:

That in EAST PHOENIX I Precinct, Maricopa County, Arizona on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER took from WAYNE W. KAHLER a motor vehicle described as follows,

to-wit: 1973 FORD PICK-UP, 1/2 TON, F100, 1975 California License Number 188MGL, VIN 10GCQ67368, with the intent to permanently deprive WAYNE W. KAHLER of such motor vehicle, all in violation of A.R.S., §13-672(A)(B), as amended 1975 and §13-1645. OR IN THE ALTERNATIVE: THEFT BY EMBEZZLEMENT

That in EAST PHOENIX I Precinct, Maricopa County, Arizona, on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER committed theft by embezzling from WAYNE W. KAHLER property, to-wit: One (1) 1973 Ford 1/2 TON PICK-UP, F100, VIN 10GCQ67368, 1975 California License Number 188MGL, of the value of over \$100.00, all in violation of A.R.S., §13-688, 13-671, 13-661, 13-662 and 13-663.

All of which is a felony under the laws of Arizona and is contrary to the form, force, and effect of the statute in such cases made and provided and against the peace and dignity of the State of Arizona;

That the said HAROLD WILLIAM DORAN aka TED FOSTER was personally present in Maricopa County, Arizona, at the time aforesaid, and after the commission of the said crime, the said HAROLD WILLIAM DORAN aka TED FOSTER fled from the justice of the State of Arizona, and is now in the custody of the Sheriff's Office, Bay City, Michigan.

That, in the opinion of your petitioner, the ends of justice require that the said HAROLD WILLIAM DORAN aka TED FOSTER be brought to the State of Arizona for trial, at the public expense; that your petitioner believes that he has sufficient evidence to secure the conviction of the said fugitive HAROLD WILLIAM DORAN aka TED FOSTER upon the charge alleged in said complaint hereinbefore referred to.

That the person named as agent is one PAUL BLUBAUM, Sheriff of Maricopa County, State of Arizona, or by his authorized agent, who is a proper person and who has no private interest in the arrest of the fugitive.

That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

WHEREFORE, your petitioner prays that a requisition may be issued upon the Governor of the State of MICHIGAN for the rendition and return of the said HAROLD WILLIAM DORAN aka TED FOSTER and that PAUL BLUBAUM, Sheriff of Maricopa County, State of Arizona or by his authorized agent as aforesaid, be appointed agent of the State of Arizona to apprehend, receive and return said fugitive to the County of Maricopa, State of Arizona, for trial.

DEAN M. WOLCOTT /s/
Dean M. Wolcott, Supervisor
County Attorney of Maricopa County,
State of Arizona
Complaint and Extradition Division

STATE OF ARIZONA } ss.
County of Maricopa }

DEAN M. WOLCOTT, being first duly sworn, upon his oath deposes and says:

That he is the duly appointed Supervisor, Complaint and Extradition Division, qualified and acting County Attorney of Maricopa County, State of Arizona; that he has read the foregoing petition and knows the contents thereof, and that the

same is true, except as to those matters and things therein stated upon information and belief, and as to such he believes them to be true.

DEAN M. WOLCOTT /s/
Dean M. Wolcott

Subscribed and sworn to before me this 2nd day of February, 1976.

BEVERLY R. PARISI /s/
Notary Public in and for the County
of Maricopa, State of Arizona.

My Commission Expires:

March 11, 1977

DORAN, Harold William aka
FOSTER, Ted

STATE OF ARIZONA
Office of the Attorney General }

Phoenix, Arizona
February 11, 1976

I have carefully examined the above and foregoing application for a requisition and the accompanying papers thereto attached.

It is my opinion, based upon such examination, that the application is in due form and complies with all of the requirements of law and the rules of interstate rendition of fugitives from justice, and that it would be proper for you, as Governor, to grant the application.

I, therefore, approve the papers and advise the issuance of the requisition therein requested.

BRUCE E. BABBITT
The Attorney General
By (Signature deleted)
Assistant Attorney General

RAUL H. CASTRO
Governor

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

February 11, 1976

The Honorable Wesley Bolin
Secretary of State
State Capitol
Phoenix, Arizona

Re: State of Arizona vs. Harold William Doran
aka Ted Foster

Dear Mr. Bolin:

The Secretary of State of Arizona is respectfully requested to authenticate papers authorizing Paul Blubaum, Maricopa County Sheriff or his his authorized deputy, as agent of the State of Arizona, to receive into custody from the authorities of the State of Michigan the above-named alleged fugitive who stands charged with the crime of Theft of Motor Vehicle, or in the alternative, Theft by Embezzlement, a felony.

The necessary instruments accompany this requisition.

Sincerely,
Raul H. Castro

MICHIGAN GOVERNOR'S WARRANT

STATE OF MICHIGAN
EXECUTIVE DEPARTMENT

WILLIAM G. MILLIKEN
GOVERNOR

To the Sheriff of the County of BAY, State of Michigan, and any other officer in this State authorized by the uniform extradition act of Michigan to execute this warrant:

Whereas, requisition has been made upon me by the Governor of the State of ARIZONA for the arrest and extradition of HAROLD WILLIAM DORAN AKA TED FOSTER wherein it has been represented to me that said HAROLD WILLIAM DORAN/TED FOSTER stands charged with the crime of THEFT OF MOTOR VEHICLE, OR IN THE ALTERNATIVE, THEFT BY EMBEZZLEMENT alleged to have been committed in the County of MARICOPA, in or about on the 18TH day of DECEMBER, A.D. 1975, being a crime under the laws of said State, and that said HAROLD WILLIAM DORAN aka TED FOSTER is a fugitive from the justice of said State; having fled therefrom and taken refuge in the State of Michigan as appears by a certified copy of APPLICATION, COMPLAINT, WARRANT & SUPPORTING PAPERS and other documents duly certified to be authentic and duly authenticated; according to the constitution and laws of the United States and of this State;

Therefore you are hereby required forthwith to arrest and secure the said HAROLD WILLIAM DORAN aka TED FOSTER wherever HE may be found within this State and to take HIM forthwith before any judge of a court of record in this State in whose jurisdiction HE may be; for further proceedings in accordance with the uniform extradition act of this

State; and after compliance therewith; unless discharged by law; to deliver HIM to PAUL BLUBAUM, SHERIFF, OR HIS AUTHORIZED agent appointed by the Governor of the State of ARIZONA to receive HIM. You will make return of this warrant within thirty days to the Governor of Michigan; and of the proceedings thereunder; and of the time and manner of the service thereof.

[SEAL]

In Testimony Whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this 22ND day of MARCH in the year of our Lord one thousand nine hundred and SEVENTY-SIX.

WILLIAM G. MILLIKEN /s/
Governor

By the Governor:
RICHARD H. AUSTIN /s/
Secretary of State

MICHIGAN GOVERNOR'S WARRANT

STATE OF MICHIGAN
EXECUTIVE DEPARTMENT

WILLIAM G. MILLIKEN
GOVERNOR

To PAUL BLUBAUM, SHERIFF OR HIS AUTHORIZED AGENT, Agent of the State of ARIZONA.

Whereas, requisition has been made upon me by the Governor of the State of ARIZONA for the arrest and extradition of HAROLD WILLIAM DORAN aka TED FOSTER from which it appears that said HAROLD WILLIAM DORAN aka TED FOSTER stands charged with the crime of THEFT OF MO-

Michigan Governor's Warrant

TOR VEHICLE, OR IN THE ALTERNATIVE, THEFT BY EMBEZZLEMENT alleged to have been committed in the County of MARICOPA IN OR ABOUT on the 18TH day of DECEMBER A.D. 1975, being a crime under the laws of said State; and that said HAROLD WILLIAM DORAN AKA TED FOSTER is a fugitive from the justice of said State; having fled therefrom and taken refuge in the State of Michigan; and

It further appearing to me that said application is authentic and duly authenticated in accordance with the constitution and laws of the United States and of this State, and that you have been appointed by the Governor of said State as the agent of said State to receive the said HAROLD WILLIAM DORAN aka TED FOSTER and remove HIM to said State;

Therefore, in the name of the People of the State of Michigan you are hereby authorized and empowered to receive and take the said HAROLD WILLIAM DORAN aka TED FOSTER from the proper authorities of the State of Michigan; after compliance has been made with the uniform extradition act of this State, and to remove HIM to the State of ARIZONA at your own expense to answer to the charge made as aforesaid:

In Testimony Whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this 22ND day of MARCH in the year of our Lord one thousand nine hundred and SEVENTY-SIX.

[SEAL]

William G. Milliken /s/
Governor

By the Governor:
Richard H. Austin /s/
Secretary of State

*Petition for Writ of Habeas Corpus***PETITION FOR WRIT OF HABEAS CORPUS**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

IN THE MATTER OF THE
PETITION OF HAROLD WILLIAM
DORAN FOR WRIT OF HABEAS
CORPUS.

File No. 76-207-T

PETITION FOR WRIT OR HABEAS CORPUS

Now comes HAROLD WILLIAM DORAN, Petitioner herein, by and through his attorney, WILLIAM J. CAPRATHE, of the Bay County Public Defender's Office, and for his complaint for the issuance of a writ of habeas corpus says as follows:

1. That the Petitioner in whose behalf the writ is applied for is restrained of his liberty pursuant to commitment on failure to furnish bond issued by Honorable Arthur E. Higgs, District Court Judge, on February 9, 1976, copy attached.
2. That this commitment indicated that it was an extension of time for authorities in Arizona to submit an Arizona Governor's warrant.
3. It further states that the first commitment on failure to furnish bond dated January 12, 1976, was based upon the sworn complaint in writing of the Bay County Prosecuting Attorney on January 12, 1976.
4. That the complaint referred to in said commitment cited no statutes for authority, nor did a warrant signed by Judge

Higgs on January 12, 1976, nor the January 12 commitment on failure to furnish bond, nor did the February 9, 1976 commitment.

5. That the Prosecuting Attorney, Eugene C. Penzien, told the attorney for the defendant, William J. Caprath, orally that the first commitment was pursuant to 780.14 and the February 9 commitment was pursuant to 780.16, both of MCLA.

6. That since the commitments were based upon a complaint and warrant that did not state statutory authority, they are invalid on their face and the commitment orders are invalid and Mr. Doran is being illegally held.

7. In addition, 780.14 requires an examination before the Judge or Magistrate before the original 30 day commitment order.

8. That no examination was afforded Mr. Doran (at least not in the presence of his counsel, who was appointed on January 24, 1976, at 11:15 a.m. That this is further evidenced by mittimus sheets dated January 12, 1976, January 21, 1976, and February 5, 1976, all signed by Judge Higgs and all including a circle around the words "demanded examination". See copies attached).

9. That since no examination was provided Mr. Doran, this confinement order is also invalid because it did not comply with the examination requirement, and Mr. Doran is being illegally held.

10. That there has been nothing served on the Defendant or, his counsel, or in the District Court file, to establish Arizona's intention or the presence of a valid warrant in Arizona.

11. That on December 18, 1975, the day of his arrest, Mr. Doran indicates that a representative of the F.B.I. appeared at the Bay County Jail and questioned him as to his being willing to waive extradition to Arizona and he was also questioned on that date by Detective Ronald Monville of Bay City Police Department who stated that Michigan would drop the receiving and concealing charges if Mr. Doran would waive extradition. On the same day, Mr. Doran was asked by Deputy Mono if he would be willing to waive extradition.

12. That on March 16, 1976, Petitioner had been detained in the Bay County Jail for a period of over 90 days without receiving a requisition of the executive authority of the state having jurisdiction of the offense nor anything in writing from them.

13. That Mr. Doran's commitment is invalid and illegal, because more than the 90 days allotted for commitment to await requisition, provided for in 780.14 and 780.16, have elapsed since Mr. Doran's arrest on December 18, 1975.

14. That a Verified Complaint for Declaratory Judgment and an Order to Show Cause for Temporary Injunction and Ex parte Restraining Order was filed for Harold Doran by this counsel and set for hearing on March 22, 1976.

15. That because of failure to personally serve the Prosecuting Attorney of Bay County, the hearing was adjourned until March 29, 1976.

16. That this hearing for Writ of Habeas Corpus should take precedence over the proceedings referred to in Paragraph 15 herein.

17. That the place of the restraint referred to herein is the Bay County Jail in the County of Bay, State of Michigan.

Petition for Writ of Habeas Corpus

18. That this petition is based upon the Code of Criminal Procedures, supplemental chapter, Michigan Compiled Laws 780, Uniform Criminal Extradition Act.

19. That for the reasons stated herein the restraint of Harold Doran is illegal and he should be dismissed from custody and the Complaint and Warrant in the District Court dismissed.

Date: March 25, 1976.

(s) William J. Caprathe
Attorney for Defendant

(s) Harold W. Doran
Defendant

Subscribed and sworn to before me this 25 day of March, 1976.

(s) William J. Caprathe
Notary Public, Bay County, Michigan
My commission expires: Aug. 6, 1978
Oakland acting in Bay

Order for Commitment

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

STATE OF MICHIGAN
COUNTY OF BAY

(Attestation deleted)

THE PEOPLE OF THE STATE OF
MICHIGAN

Plaintiff
vs.

HAROLD WILLIAM DORAN
Defendant

FILE NO. 76-207-T

ORDER FOR COMMITMENT

At a session of said Court held in the Courthouse in the City of Bay City, County of Bay, State of Michigan on the 14 day of April, 1976.

PRESENT: HONORABLE JOHN X. THEILER, CIRCUIT JUDGE.

On March 29, 1976, the above-named person was arraigned by this Court on a warrant issued by the Governor of the State of Michigan calling for the extradition of said person to the State of Arizona. He has indicated that he wishes to apply for a Writ of Habeas Corpus and he has been granted until April 23, 1976 to file an application for a writ of habeas corpus.

Order for Commitment

NOW, THEREFORE, IT IS ORDERED that the defendant be committed to the custody of the Bay County Sheriff.

IT IS FURTHER ORDERED that no bail bond is set at this time.

John X. Theiler /s/
JOHN X. THEILER, Circuit Judge

*Application for Leave to Appeal to the Michigan Court of Appeals***APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN COURT OF APPEALS**

(Filed April 28, 1976)

TO THE HONORABLE COURT OF APPEALS:

HAROLD WILLIAM DORAN, Appellant herein, through his attorney WILLIAM J. CAPRATHE, of the Bay County Public Defender's Office, respectfully shows to the Court that he is lodged in the Bay County Jail in the City of Bay City, in the County of Bay, State of Michigan, and that the Honorable John Theiler of the Bay County Circuit Court on March 29, 1976, erroneously dismissed defendant's writ of Habeas Corpus and refused to take evidence and rule upon a verified complaint for declaratory judgment and order to show cause for temporary injunction.

Appellant further shows that on December 18, 1975, the defendant herein was arrested for possession of a stolen vehicle in Michigan and possible auto theft in Arizona.

Appellant further shows that file no. 6-4023H in the District Court for the 74th Judicial District, State of Michigan, exhibit no. 1 of the above titled writ of habeas corpus contains a complaint dated January 12, 1976, and signed by Eugene C. Penzien, Bay County Prosecuting Attorney and Arthur E. Higgs, District Judge for the District Court of the 74th Judicial District, State of Michigan, and a warrant signed by Judge Higgs. The said complaint and warrant alleges that there is an outstanding warrant in Arizona and Harold William Doran should be arrested and dealt with according to law. Since appellant was already in custody, there was no need for further arrest.

*Application for Leave to Appeal to the
Michigan Court of Appeals*

Appellant further shows that the District Court file contains a document also dated January 12, 1976, entitled "Commitment on Failure to Furnish Bond," wherein the Honorable District Judge Arthur Higgs stated, "and whereas upon the examination of said above named person this day before me in regard to said offense, it appears to me that there is reasonable cause to believe the said offense was committed and that the said above-named person to be guilty thereof, and that he is duly charged therewith in the State of Arizona and has fled from said state to this state, and is liable to be delivered over upon demand of the Governor of said State from whence he fled justice; — ." Said commitment also set a \$10,000 bond and ordered the defendant's appearance on February 15, 1976. Also, contained in said file is a mittimus dated January 12, 1976, stating, "fugitive from justice" and indicating "examination demanded" and setting the same for January 23, 1976, at 3:30 p.m., but was crossed out and replaced with February 5, 1976 at 9:00 a.m. and signed by the Honorable Arthur E. Higgs. Appellant further shows that another mittimus was signed by the Honorable Arthur Higgs on January 21, 1976, indicating that there were two charges, "receiving and concealing over \$100 and fugitive from justice." Also, "demanded examination." There were two numbers on this mittimus, 5-4687H and 6-4023H, the bonds were \$10,000 and \$2,000. The examination date was set to be held on January 23, 1976, at 2:30 p.m. and February 5, 1976 at 9:00 a.m.

Appellant further shows that on January 21, 1976, the Public Defender's Office, more particularly, William J. Caprathe was appointed to represent Mr. Doran on both files 5-4687H and 6-4023H. Appellant further shows that examination was requested with regards to both cases by Mr. Doran who was not represented by counsel until our appointment on January 21, 1976 and by counsel on his behalf thereafter which is evidenced by the mittimus in said file. Appellant further shows that the

*Application for Leave to Appeal to the
Michigan Court of Appeals*

preliminary examination scheduled for January 23, 1976 for the receiving and concealing charge, 5-4687H was adjourned without Motion or any mention on the record or any notice to the defendant or his attorney who was appointed on January 21, 1976. Appellant further shows that the first mention of the adjournment was in response to defense counsel's allegations on page twenty of the transcript of February 5, 1976 extradition proceedings. Also at that proceeding a new preliminary examination date was set for February 13, 1976.

Appellant further shows that the District Court further said at the February 5 hearing on page twenty-three of its transcript, that it would not allow testimony other than as to the face of the warrant when it arrived.

Appellant further shows that there is a third mittimus in said file dated February 5, 1976, referring to the offense a fugitive from justice, stating "demanded examination" continuing the bond at \$10,000 and setting the preliminary examination to be held on April 2, 1976 at 9:00 a.m. Appellant further shows that District Court Judge Higgs, on February 9, 1976, ordered the dismissal of the receiving and concealing case which was scheduled for examination on February 13, 1976, 5-4687H upon request of the Prosecuting Attorney of Bay County dated February 5, 1976. Neither the defendant, nor his counsel, received notice of said request nor order of dismissal until after they were entered. Appellant further shows that on February 9, 1976 Judge Higgs signed another commitment on failure to furnish bond charging the defendant as a fugitive from justice, and ordered his appearance on April 2, 1976 at 9:00 a.m.

Appellant further shows that in spite of the Honorable Judge Higgs' statements in the commitment orders of January 12 and February 9, no examination was ever conducted in the presence of this counsel.

*Application for Leave to Appeal to the
Michigan Court of Appeals*

Appellant further shows that on March 1, 1976 a verified complaint for declaratory judgment and order to show cause for temporary injunction and ex parte restraining order were filed with the Court, a copy of which is attached hereto. Appellant further shows that the only defendants upon whom personal service was obtained were the Bay County Prosecutor, the Bay County Sheriff, and District Judge Arthur E. Higgs, a hearing was set for March 22, 1976 at 9:30 a.m.

Appellant further shows that on or about March 15, 1976 unbeknownst to counsel for the defendant, defendant had a jail officer, Frank Przydylski, deliver a hand-printed document entitled "Writ of Habeas Corpus" a copy of which is attached, requesting the court to release him on March 16, 1976 to the Honorable Judge Dardas of the Bay County Circuit Court. Appellant further shows that according to testimony on a hearing in this case said jail officer delivered the papers to Judge Dardas' bailiff or secretary and also delivered a copy of said document to the Prosecuting Attorney's Office on the day he was given them which was March 15, 1976. Appellant further shows that somehow the original document and a copy of it appeared in the District Court file no. 6-4023H.

That the Order to Show Cause hearing for temporary injunction and restraining order originally set for March 22 was adjourned until March 29, 1976 to allow time to effect service.

And further counsel for the defendant after learning of the document entitled "writ of habeas corpus," obtained a copy of said writ from the defendant and filed a copy on March 23, 1976 in the Circuit Court file.

Appellant further shows that attorney for the defendant then filed on March 26, 1976, a petition for writ of habeas corpus a copy of which is attached, entitled: In The Matter of the

*Application for Leave to Appeal to the
Michigan Court of Appeals*

Petition of Harold William Doran for Writ of Habeas Corpus, referring to file no. 76-207-T in the Circuit Court for the County of Bay and Judge Theiler set hearing for March 29, 1976. Appellant further shows that on March 29 the Court conducted a hearing pursuant to the Writ of Habeas Corpus filed by counsel on March 26, 1976, only.

Appellant further shows that on behalf of the defendant, the attorney for the defendant subpoenaed the following witnesses: Sheriff Francis E. Bowen, Honorable Leon R. Dardas, Circuit Judge, George Mullison, Assistant Prosecuting Attorney, Eugene C. Penzien, Prosecuting Attorney, Honorable Arthur E. Higgs, District Judge, James Monaghan, Bay County Sheriff's Department, James Palmer, Bay County Sheriff's Department, Frank Przybylski, Bay County Sheriff's Department, and Ron Monville, Bay City Police Department.

Appellant further shows that Judge Theiler suppressed the subpoenas of Judge Dardas, Judge Higgs, Sheriff Bowen, Prosecuting Attorney Penzien, Assistant Prosecuting Attorney Mullison. Appellant further shows that testimony taken in District Court File No. 6-4023H was accepted in evidence. The errors alleged were presented to the Court by way of testimony and the District Court File No. 6-4023H.

Appellant further shows that the Court ruled at said habeas corpus hearing that it felt there was error with regard to the commitment of Mr. Doran prior to the arrival of a Governor's Warrant, but it doesn't have any effect of the said warrant and that said warrant should be tested on its own without respect to the prior commitment proceedings.

Appellant further shows that the Circuit Court on March 29 arraigned Harold Doran on a Governor's Warrant and is presently holding the defendant pursuant to an Order for Commit-

*Application for Leave to Appeal to the
Michigan Court of Appeals*

ment dated April 14, and committing him to the custody of the Bay County Sheriff until April 23, 1976, which was the time set for the filing of an application for writ of habeas corpus pursuant to said warrant. The Court also ruled that it would not stay its proceedings for appeal purposes of the writ.

Appellant further shows that the Court in addition said that the verified complaint for declaratory judgment and order to show cause for temporary injunction could be handled simultaneously with the writ of habeas corpus pursuant to the Governor's Warrant, and it would not grant a stay of proceedings to allow for a separate hearing with respect to pleadings nor a stay to allow for an appeal of his decision with respect to them.

Appellant further shows that the Court has extended the time for filing the Petition for Writ of Habeas Corpus pursuant to the Governor's Warrant to April 30, 1976.

Appellant further shows that the Court is holding the defendant without bail.

Appellant further shows that the defendant unbeknownst to this attorney until April 27, 1976, filed on April 26 a handwritten document entitled "Motion for Petition Asking Superintending Control," a copy of which is attached.

Appellant further shows that due to the fact that it was over 90 days from the date of appellant's arrest, December 18, 1975, to the date of his arraignment on the Governor's Warrant on March 29, 1976. The People of the State of Michigan violated the extradition statutes of the State of Michigan MCLA 780.

Appellant further shows that said statutes were further violated by the fact that the District Court did not provide

*Application for Leave to Appeal to the
Michigan Court of Appeals*

for a preliminary examination with the presence of counsel before proceeding on commitment orders.

Appellant further shows that the commitments were in violation of the constitutional right to be informed as to why he is being held, in that all warrants, complaints, and commitment orders in the District Court File were absent of any statutory reference or other legal authority for commitment.

Appellant further shows that the commitment was illegal because there was nothing in the District Court File in writing from the State of Arizona swearing that there was a warrant for Mr. Doran in Arizona.

Appellant further shows that the commitment was illegal because a document entitled "writ of habeas corpus" was not properly dealt with in the Bay County Circuit Court.

Appellant therefore prays that upon the hearing hereof, this Honorable Court will grant leave for an appeal in the nature of mandamus or certiorari from the order of Circuit Court Judge John X. Theiler dismissing defendant's Petition for Writ of Habeas Corpus and dismiss the Governor's Warrant and cause defendant to be dismissed from custody and further that this Court set a reasonable bond in the interim.

And further, that in the event the warrant not be dismissed, the Circuit Court be ordered to proceed to hearing and ruling on the declaratory judgment and order to show cause for temporary injunction, before requiring a writ of habeas corpus.

(s) William J. Caprathé

Dated: April 28, 1976

Complaint for Writ of Habeas Corpus

In the Circuit Court for the County of Bay
COMPLAINT FOR WRIT OF HABEAS CORPUS
(Filed April 30, 1976)

NOW COMES HAROLD WILLIAM DORAN, Petitioner herein, by and through his attorney, William J. Caprathe of the Bay County Public Defender's Office, and for his complaint for the issuance of a writ of habeas corpus says as follows:

- 1) That the Petitioner in whose behalf the writ is applied for is restrained of his liberty pursuant to an order for commitment signed by the Honorable John X. Theiler, in the Circuit Court for the County of Bay on the 14th day of April, 1976, which refers to a Warrant issued by the Governor of the State of Michigan calling for the extradition of Harold W. Doran to the State of Arizona.
- 2) That the place of the restraint is the Bay County Jail, County of Bay and State of Michigan.
- 3) That this petition on behalf of Harold W. Doran, Petitioner, for habeas corpus is specifically permitted by the provisions of the Uniform Criminal Extradition Act, being M.C.L.A. 780.
- 4) That the said restraint according to the best of the knowledge and belief of the undersigned is based upon an alleged warrant issued in the State of Arizona charging the petitioner with theft of motor vehicle, or in the alternative: theft by embezzlement.
- 5) That the said restraint is illegal for all of the reasons contained in the petitioner's Application for Leave to Appeal and the documents attached thereto, filed with the Michigan

Complaint for Writ of Habeas Corpus

Court of Appeals on April 28, 1976, copies of which were filed in the Circuit Court and were served upon the Prosecuting Attorney.

- 6) That the said restraint is illegal in that the petitioner is not a fugitive from the State of Arizona and the documents served upon him purporting to be a Governor's Warrant are invalid.

(s) Harold William Doran

Subscribed and sworn to before me this 30th day of April, 1976.

(s) William J. Caprathe
Notary Public, Bay County, Michigan
My commission expires:

Amended Arizona Complaint

IN THE JUSTICE COURT DR #75-120589 PPD
 EAST PHOENIX I PRECINCT, MARICOPA COUNTY,
 STATE OF ARIZONA

STATE OF ARIZONA,	Plaintiff	No. 9204
v.		
HAROLD WILLIAM DORAN aka TED FOSTER	Defendant(s)	COMPLAINT (FELONY)

**THEFT OF MOTOR VEHICLE OR IN THE
ALTERNATIVE: THEFT BY EMBEZZLEMENT**

The complainant herein personally appears and, being duly sworn, complains (on information and belief) against HAROLD WILLIAM DORAN aka TED FOSTER charging that in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 3rd day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER took from WAYNE W. KAHLER a motor vehicle described as follows, to-wit: 1973 FORD PICKUP, 1/2 TON, F100, 1975 California License Number 188MGL, VIN 10GCQ67368, with the intent to permanently deprive WAYNE W. KAHLER of such motor vehicle, all in violation of A.R.S., Sec. 13-672(A) & (B), as amended 1975 and 13-1645.

**OR IN THE ALTERNATIVE: THEFT BY
EMBEZZLEMENT**

That in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 3rd day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER committed theft by

Amended Arizona Complaint

embezzling from WAYNE W. KAHLER property, to-wit: One (1) 1973 FORD 1/2 TON PICKUP, F100, VIN 10GCQ-67368, 1975 California License Number 188MGL, of the value of over \$100.00, all in violation of A.R.S., Sec. 13-681, 13-682, as amended 1972, and 13-688, 13-671, 13-661, 13-662, 13-663.

Complainant C/L Richard Bishop /s/
Agency or Title PPD.

Subscribed and sworn to before me on 1-7-76.
Mary Jo Dixman, J.P.
Magistrate Acting Title

It is requested that a (X) warrant, () summons be issued.

It is, is not requested that Defendant appear for finger-prints and photograph.

NORVAL JESPERSON
Deputy County Attorney

Amended Arizona Warrant

IN THE JUSTICE COURT
 EAST PHOENIX #1 PRECINCT, MARICOPA COUNTY,
 STATE OF ARIZONA

THE STATE OF ARIZONA

vs.

HAROLD WILLIAM DORAN

Defendant(s)

No. 9204

DR #75-120589

PPD

**WARRANT FOR ARREST
 "AMENDED"**

TO ALL PEACE OFFICERS OF THE STATE OF ARIZONA:

A complaint has been filed in this court against HAROLD WILLIAM DORAN aka TED FOSTER charging that in East Phx. #1 Precinct, Maricopa County, Arizona, on or about the 3rd day of December 1975, the crime of Felony, to-wit: THEFT OF MOTOR VEHICLE or in the alternative: THEFT BY EMBEZZLEMENT has been committed.

I have found reasonable cause to believe that such offense(s) were committed and that the accused committed them, and reason to believe that the accused will not appear in response to a summons, or that a warrant is otherwise appropriate.

YOU ARE THEREFORE COMMANDED to arrest the accused and bring him before this court to answer the charges. If this court is unavailable, or if the arrest is made in another county, you shall take him before the nearest or most accessible magistrate. You may release him if he posts a secured appearance bond in the amount of dollars (\$).

Date: April 26, 1976

DR No: #75-120589 PPD.

(Signature deleted)
 Justice of the Peace

*Amended Arizona Warrant***CERTIFICATION**

I hereby certify that the attached is a true and correct copy of the Warrant and Complaint entered in the Criminal Docket, Cause No. 9204—Page No. 204—Book No. 18 in the Justice Court of the East Phoenix No. 1 Precinct in the matter of THE STATE OF ARIZONA v. HAROLD WILLIAM DORAN aka TED FOSTER.

DONE this 26th day of April, 1976.

(signature deleted)
 JUSTICE OF THE PEACE

*Affidavit of Wayne Stewart***AFFIDAVIT**

STATE OF ARIZONA }
County of Maricopa, } ss.

WAYNE STEWART, being first duly sworn upon his oath deposes and says:

- 1) That he is a Deputy County Attorney for Maricopa County, assigned to the Complaint Department and is authorized to execute this Affidavit and believes the below information to be true and correct.
- 2) That on APRIL 26, 1976, WAYNE STEWART personally contacted Judge Weeks, Justice of the Peace, East Phoenix I Precinct, Maricopa County, State of Arizona, and moved to amend the Warrant and Complaint in this Cause #9204 to strike the incorrect date of DECEMBER 18, 1975 and insert in its place therein corrected date of DECEMBER 3, 1975.
- 3) That on APRIL 26, 1975, Judge Weeks granted the states motion to amend the aforementioned Complaint and Warrant to reflect the correct date of DECEMBER 3, 1975.
- 4) That the attached copies of the amended Warrant and complaint are true and correct copies of the originals on file with the Court in this cause.

Wayne Stewart /s/
WAYNE STEWART

Subscribed and sworn to before me this 29th day of APRIL, 1976.

(Signature deleted)
Judge of the Superior Court

*Order—Justice of the Peace of East Phoenix
Judge's Court Order*

**ORDER—JUSTICE OF THE PEACE OF EAST PHOENIX
JUDGE'S COURT ORDER**

CAUSE NO: #9204 HAROLD WILLIAN DORAN aka
TED FOSTER

Date: April 26, 1976.

Felony, to-wit: THEFT OF MOTOR VEHICLE or in the alternative: THEFT BY EMBEZZLEMENT

State moves to amend warrant and complaint.

Motion granted.

Warrant and complaint amended to read, "on or about the 3rd day of December, 1975," and delete, "on or about the 18th day of December, 1975,".

(Signature deleted) [SEAL]

Justice of the Peace of
East Phoenix #1 Precinct

cc: C. A. — Deputy
C. A. — Files
M.C.S.D. — Warrants

*Court of Appeals Order Denying Application
for Leave to Appeal*

**COURT OF APPEALS ORDER DENYING APPLICATION
FOR LEAVE TO APPEAL**

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the 4th day of May in the year of our Lord one thousand nine hundred and seventy-six.

Present the Honorable
VINCENT J. BRENNAN
Presiding Judge

S. JEROME BRONSON
WILLIAM R. BEASLEY
Judges

In Matter of Extradition:
PEOPLE OF THE STATE OF
MICHIGAN,
Plaintiff-Appellee,
v
HAROLD WILLIAM DORAN,
Defendant-Appellant.

Docket # 28507
L.C. No. 76-207-T

In this cause motions are filed by defendant-appellant for application for emergency leave to appeal, for stay of proceedings in lower court, for bond pending appeal, and for immediate consideration, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby, GRANTED.

*Court of Appeals Order Denying Application
for Leave to Appeal*

IT IS FURTHER ORDERED that the application for emergency leave to appeal be, and the same is hereby, DENIED.

IT IS ORDERED that the motion for stay of proceedings in lower court be, and the same is hereby, DENIED.

IT IS ORDERED that the motion for bond pending appeal be, and the same is hereby, DENIED.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 5th day of May, in the year of our Lord one thousand nine hundred and seventy-six.

RONALD L. DZIERBICKI /s/
Clerk

*Bay County Circuit Court
Appointment of Attorney*

**BAY COUNTY CIRCUIT COURT
APPOINTMENT OF ATTORNEY**

Proper showing having been made to the Court that the Defendant is unable to obtain counsel and is entitled to have an attorney appointed to represent him in the appeal of this proceeding to the Supreme Court of the State of Michigan and that the Public Defender's Office has indicated that they need the assistance of outside counsel.

IT IS HEREBY ORDERED:

That the State Appellate Defender's Office, an Attorney at Law, whose business address is Third Floor, North Tower, 1200 Sixth Avenue, Detroit, Michigan 48226, be assigned as appellate counsel for said defendant, to assist the Bay County Public Defender's Office in representing Petitioner.

(s) John X. Theiler
Circuit Judge

Dated this 5th day of May, 1976.

Delayed Application for Leave to Appeal

**STATE OF MICHIGAN
IN THE SUPREME COURT**

IN MATTER OF EXTRADITION People -vs- HAROLD DORAN Defendant-Appellant.	Court of Appeals No. 28507 Lower Court No. 76-207-T
---------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------

DELAYED APPLICATION FOR LEAVE TO APPEAL

NOW COMES the above-named Defendant-Appellant, by his attorneys, the STATE APPELLATE DEFENDER OFFICE, by KATHLEEN M. CUMMINS, and moves this Honorable Court to grant leave to appeal and states in support thereof the following:

1. On December 18, 1975 Harold William Doran, while en route from Arizona to Bay City, was arrested in Bay County and charged with receiving and concealing stolen property. This charge arose from Mr. Doran's possession of the truck in which he had driven from Arizona.
2. Immediately following his arrest, the Bay City Police notified authorities in Maricopa County, Arizona, and on January 7, 1976, Maricopa County issued a warrant against Mr. Doran for theft of a motor vehicle or in the alternative theft by embezzlement.
3. On January 12, 1976, the Bay County prosecutor filed a fugitive complaint pursuant to the Arizona warrant against Mr. Doran, and on the same day Mr. Doran was arraigned on the fugitive warrant in 74th district court. At this hearing, a

bond of \$10,000 was set. This was the first effort to set bond since Mr. Doran's initial incarceration in the Bay County Jail on December 18, 1975. Mr. Doran was recommitted to jail upon failure to post bond and further proceedings were adjourned to February 5, 1976.

4. In the interim, the Bay County Public Defender was appointed to represent Mr. Doran. A preliminary examination on the Bay County charge was never held, although requested by defendant January 12 and 21, 1976. This charge was dismissed by the Bay County prosecutor February 5, 1976, over the objection of defense counsel. (See transcript of February 5, 1976 hearing in 74th district court, p. 21).

5. At the February 5 hearing, the district court granted the prosecutor's request for a second commitment of sixty days in which to obtain a governor's warrant (February 5, p. 2). A defense motion for reduction of bond was denied (February 5, p. 4).

6. On February 11, 1976 the State of Arizona issued a requisition to Michigan for the extradition of Mr. Doran.

7. On March 22, 1976, the State of Michigan issued a governor's warrant for Mr. Doran's arrest. By this date, Mr. Doran had been incarcerated in the Bay County Jail 94 days.

8. On March 26, the Bay County Public Defender filed a petition for writ of habeas corpus attacking the governor's warrant on the grounds that it had been issued after the 90 day time limit set by the Uniform Criminal Extradition Act (MCLA 780.1-31).

9. On March 29, 1976, Mr. Doran was arraigned on the governor's warrant before the Honorable John X. Theiler in Bay County Circuit Court. Judge Theiler dismissed the peti-

tion for writ of habeas corpus, finding that although there was error with regard to the commitment of Mr. Doran prior to the arrival of a governor's warrant, this error did not affect the validity of the warrant, which would have to be independently attacked.* Judge Theiler refused to grant a stay of extradition so that an appeal could be taken from his dismissal of the March 26 writ.

10. At the March 29 proceeding Judge Theiler gave Mr. Doran until April 30, 1976, in which to file another petition for writ of habeas corpus. The judge stated that he would also hear the public defender's previously filed complaints for injunctive and declaratory relief at the time of the hearing on the second writ of habeas corpus.

11. On April 28, 1976, the Bay County Public Defender filed in the Court of Appeals an application for leave to appeal the dismissal of the March 26 habeas corpus action.

12. On April 30, 1976, the Bay County Public Defender filed a second petition for writ of habeas corpus, renewing his attack on the illegal restraint of Harold Doran and raising the questions of fugitivity and of the validity of the governor's warrant. Judge Theiler has set this petition for hearing on August 10, 1976. This adjournment date has acted as a de facto stay of extradition.

13. On May 5, 1976 the Court of Appeals denied the public defender's application for leave to appeal and also refused

*The State Appellate Defender Office has requested, but not received transcripts of the hearings held in Bay County Circuit Court in this matter. However, the court reporter has informed appellate counsel that she is overloaded with work and could not estimate when she would be able to prepare these transcripts. Due to the emergency nature of this proceeding appellate counsel is filing this application before receipt of these transcripts, which will be forwarded to this Court upon receipt.

to grant bond or a stay of extradition. (Defendant had been held without bond since the March 29 arraignment on the governor's warrant.)

14. On May 7, 1976, the State Appellate Defender Office was appointed by Judge Theiler to appeal the Court of Appeals order.

15. Appellant contends that the dismissal of his petition for writ of habeas corpus, affirmed by the Court of Appeals, was clearly erroneous for the following reasons.

A. THE GOVERNOR'S WARRANT WAS INVALID SINCE IT WAS ISSUED IN EXCESS OF 90 DAYS AFTER APPELLANT'S ARREST.

Michigan has adopted the Uniform Criminal Extradition Act. MCLA 780.1-31; MSA 28.1285(1)-(31). Sections 14 and 16 of this act provide that once an examination before a judge or magistrate in the asylum state has revealed that defendant is charged with a crime in the demanding state and has fled from that state, the accused may be committed twice: once for 30 days and secondly for an extension period of 60 days, to await the issuance of a governor's warrant. The plain import of these sections is if the governor's warrant is not perfected sometime during these two commitments (totalling 90 days), the accused must be discharged. In *In Re Albert L. White*, 2 Mich App 493 (1966) the Court of Appeals held that if the alleged fugitive was not arrested under warrant of governor within 30 days, the statute allowed a second commitment for 60 days, but in no case did the statute authorize a third commitment.

In the case at bar, Mr. Doran had been detained for longer than 90 days by the time the governor's warrant was

issued (on March 22, 1976). He had been detained for 102 days by the time he was actually arraigned on the governor's warrant.

MCLA 780.13 of the extradition act provides that in cases where a potential extraditee is arrested without a fugitive warrant

"... the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section*; and thereafter his answer shall be heard as if he had been arrested on a warrant."

However, in this case this initial judicial determination of fugitivity did not take place until the 74th district court hearing on January 12, 1976. Since the delay of almost a month in bringing Appellant before a magistrate was not due to Appellant's request, but to the prosecutor's neglect, the statutory period for issuance of the governor's warrant cannot, in fairness, be held to run from the January 12 appearance. Rather, the period should run from the date Appellant was detained for the purpose of extradition. It is clear that the Bay County prosecutor never had any real intention of proceeding on the Michigan charge and that this charge was merely a pretext upon which to detain Appellant until the initial warrant from Arizona arrived. The fact that the Arizona authorities were notified immediately after Appellant's arrest further strengthens the implication that the sole purpose of Appellant's detention, from its outset on December 18 was to hold him for extradition to Arizona.

Since no governor's warrant was issued within ninety days of December 18, 1976, the date Appellant was, in effect, first

*MCLA 780.12.

detained as a fugitive, *White*, *supra* requires that he be discharged.

B. APPELLANT MUST BE DISCHARGED WHERE THE REQUISITION TENDERED BY THE DEMANDING STATE WAS NOT VISIBLE SUPPORTED BY AN ADEQUATE JUDICIAL FINDING OF PROBABLE CAUSE.

Arizona's requisition, upon which the Michigan governor's warrant was based, was supported by the following items: 1. a complaint by Richard Bishop a police officer of the East Phoenix 1 precinct, sworn to before a justice of the peace, and an arrest warrant issued by the same justice of the peace, both dated January 7, 1976, 2. the affidavit of another Maricopa county police officer, Thomas Bradley attesting to the fact that an attached photo of Harold Doran depicted the same person as that charged with theft/embezzlement of a motor vehicle, issued February 3, 1976, an affidavit by the same police officer attesting to contact with unnamed people "having knowledge of the crime" and preparation of reports, also issued February 3, a certification of the arrest warrant and complaint by Dean M. Wolcott, a Maricopa County attorney, applying for requisition and a recommendation for requisition signed by an assistant Arizona attorney general. (See Appendix).

Richard Bishop's complaint (supporting the January 7 warrant) reads as follows:

"On or about the 18th day of December, 1975, Harold William Doran a/k/a Ted Foster took from Wayne W. Kahler, a motor vehicle described as follows, to wit: 1973 Ford Pickup 1/2 ton, F 100 1975 California License No. 188 MGL VIN 10 GCQ 67368, with the intent to perman-

ently deprive Wayne W. Kahler of such motor vehicle, all in violation of A.R.S., sec 13-672 (A) (B), as amended 1975 and 13-1645.

OR IN THE ALTERNATIVE: THEFT BY EMBEZZLEMENT.

"That in East Phoenix 1 Precinct, Maricopa County, Arizona: on or about the 18th day of December, 1975, Harold William Doran a/k/a Ted Foster committed theft by embezzling from Wayne W. Kahler property, to-wit: One (1) 1973 Ford 1/2 Ton Pickup, F100, VIN 10GCQ67368, 1975 California License Number 188 MGL, of the value of over \$100.00, all in violation of A.R.S., Sec. 13-681, 13-682, as amended 1972, and 13-688, 13-671, 13-661, 13-662, 13-663."

Apart from filling in date, place, alleged stolen object and ownership, this complaint merely recited Arizona's statutory descriptions of larceny and embezzlement.* The complaint did not show any personal knowledge by the complaining officer of the facts of the crime.

Neither the Uniform Criminal Extradition Act nor the Federal statute on extradition (18 USC §3182 (1964)) expressly require that a requisition be supported by probable cause. Both statutes state that extradition is dependant upon submission to the asylum jurisdiction of an indictment, or an affidavit made before a magistrate, charging a felony. However, case law interpreting 18 USC 3182 (to which the Extradition Act is

*Theft of a motor vehicle:

ARS 13-672(A)

13-1645

13-661-663

13-671

13-682

Theft by Embezzlement:

ARS 13-688

expressly subject, MCLA 780.2, *Williams v County Sheriff*, 395 Mich 204, 213 (1975), have held that where the rendition request is supported by a warrant rather than indictment such warrant *must* satisfy the asylum state that probable cause exists for charging a felony *before* rendition can take place. *Kirkland v Preston*, 385 F 2d 670 (DC Circuit 1967); extradition of the Appellants from the District of Columbia to Florida was sought merely on the basis of the affidavit of a Miami police officer, sworn to before a justice of the peace, and an arrest warrant issued by the Justice of the peace. The affidavit did not reflect personal knowledge of the facts of the crime by the complaining officer but merely alleged the offense in the statutory language. The D.C. Circuit Court discharged the defendants, holding that the complaint did not show probable cause since it did not spell out the key details of the offense but was framed in conclusory, statutory language only. *Kirkland* was cited approvingly by Justice Williams' opinion in *Williams v Wayne County Sheriff*, 395 Mich 204, 238-240 (1975).

A recent federal case, *Ierardi v Gunter*, 528 F 2d 929 (CA1, 1976), held that although the probable cause determination did not necessarily have to be made by the asylum state, "the neutral and detached judgment of a judicial officer or tribunal" or minimally "some form of judicial process" determining probable cause was an absolute prerequisite to rendition. *Kirkland*, *supra*, 673 makes clear that before the asylum state can be satisfied that there is probable cause for believing the accused is guilty, the complaint supporting requisition must at least report or summarize enough evidence to justify issuance of an arrest warrant in the accusing state.

Appellant contends that the affidavits supporting Arizona's requisition do not reflect a judicial probable cause determination sufficient to justify rendition by Michigan and moreover that the affidavits do not reflect enough probable cause to charge a felony in Arizona.

The complaint of Richard Bishop is framed in conclusory, statutory allegations and in fact is almost identical in form to the officer's complaint in *Kirkland*. This affidavit does not recite key details of the offense and is based only on information and belief.

The affidavits of Thomas Bradley were not supporting affidavits of the justice of the peace warrant but were issued almost a month later. However, they did nothing to supplement the insufficient showing of probable cause offered by the original complaint. One of Bradley's affidavits merely identified a photo of Harold Doran as the person whose extradition was being sought. The other deposed that the officer had access to reports, statements, etc. and persons having knowledge of the crime without detailing or attaching any of these purported statements. This is contrary to *Kirkland's* injunction that since the accused will not have the benefit of a preliminary probable cause hearing before extradition, probable cause must be spelled out in the supporting affidavits themselves. See *Kirkland*, *supra* 676.

Further, the determination of probable cause reflected by the ~~too~~ Arizona warrant issued by a justice of the peace may have been ~~too~~ informal to satisfy Michigan standards. Michigan has abolished the justice courts and felony warrants must now be issued by magistrates who are licensed to practice law. MCLA 600.9921(1)(a); 600.9922; 600.8317; 600.8311(a)-(d); 600.8201. In contrast, Arizona justices of the peace are not required to be lawyers (and most aren't): the only qualification for the office is registered voter status. *State v Lynch*, 107 Ariz 463, 489 P 2d 697, 698 (1971); *State v Dziggel*, 16 Ariz App 289, 492 P 2d 1227 (1972); *Crouch v Justice of the Peace*, court of the 6th pct, 7 Ariz App 460, 440 P 2d 1000 (1968); Hink, *Judicial Reform in Arizona*, 6 Ariz L Rev 13, 24-25 (1964-65).

Moreover, in Arizona an affidavit may be sufficient to launch

the process leading to arrest and yet not show probable cause. Ariz R. Crim Proc 1, 2, 17 ARS. That is because in Arizona the complaint can be supplemented by the magistrate's personal examination of the complainant or other witnesses. Arizona makes such supplemental examination the magistrate's duty where the complaint is made upon information and belief. In *State v Lynch*, *supra*, where the defendant alleged that the justice of the peace had interviewed the complaining witnesses before conducting a preliminary hearing, the Arizona court held:

"The complaint in this case was filed by a third party adult with no personal knowledge of the crime. . . we held such complaints to be proper . . . But when a complaint is made in information and belief, there arises a duty upon the magistrate or justice of the peace to make further inquiry into the source of the complainants information and the grounds of his belief. The purpose of this investigation is to protect the accused from frivolous and malicious charges. From this, the magistrate will subsequently be able to determine in his own mind whether probable cause exists to support a warrant." *Lynch, supra*, 489 P 2d 697, 698 (1971).

Neither the Arizona warrant nor anything else in this record indicates that the justice of the peace made any attempt to make further inquiry into the source of the information contained in the police officer's complaint. A warrant and complaint that is insufficient to show probable cause in the accusing state cannot satisfy the asylum state that there is probable cause for rendition of the accused. *Kirkland v Preston*, *supra*, 675.

Since the affidavits supporting the Arizona requisition do not present an adequate judicial finding of probable to satisfy the Fourth Amendment, Harold Nolan must be discharged.

C. The subject matter outlined in issues A and B, above, involves legal principles of major significance to the jurisprudence of Michigan. GCR 1963 851.1(1). The effect of failure to issue a governor's warrant within the 90 days prescribed by the Extradition Act (Issue A) as well as what standard of sufficiency will be applied to a requisition supported by a warrant and complaint, are both, as far as Appellant can ascertain, questions of first impression in Michigan. This Court has evolved standards for testing the sufficiency of an extradition request based on a grand jury indictment, which contains a built in guarantee of probable cause. *Williams v Wayne County Sheriff*, 395 Mich 204 (1975). However, no Michigan standard has been developed to test the adequacy of a requisition request supported solely by a complaint and warrant. Appellant's case would provide a vehicle for developing such a standard.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant his Delayed Application for Leave to Appeal.

Respectfully submitted,

STATE APPELLATE DEFENDER
OFFICE

BY: KATHLEEN M. CUMMINS /s/
KATHLEEN M. CUMMINS
Assistant Defender
Third Floor, North Tower
1200 6th Avenue
Detroit, Michigan 48226
256-2814

Dated: July 27, 1976

**EXCERPTS FROM HABEAS CORPUS HEARING IN
BAY COUNTY CIRCUIT COURT**

(42) * * * THE COURT: The Defendant, Respondent, Petitioner, was arrested in this State on the 18th of December. It would appear that he was then charged with possession of a motor vehicle, that having been stolen and having a value of more than a Hundred Dollars and knowing it to have been so stolen which would be a valid charge under Michigan law.

I would presume that even if a person steals in one State and in a continued asportation crosses the State line and even though it's a continuation of the original larceny, a new offense is committed in the new State. He has either (43) stolen in the new State, a continuation of the original offense, or if that terminates with the State line as an affront of that sovereignty, not this sovereignty, then he affronts this sovereignty by that which he stole before. I don't have any citations on it but that sounds logical to me, so I see no reason why the charge brought by the Michigan authorities wasn't a valid charge under Michigan law, if in fact there had been a stealing of a car outside of the State, or an embezzlement whether it's larceny by embezzlement or larceny by trick or larceny by simple stealing. There's nothing to indicate that this proceedings then was invalid. So frequently it happens, however, when there are multiple offenses, when a State apprehends a subject, finds that he was wanted with something in conjunction with that transaction in another State that they're willing to forego criminal prosecution and allow the other State to go ahead with it, so I don't think there's anything improper, that it was indicated that Arizona contended that the property had been stolen in Arizona and was willing to extradite. This State then decided that would suffice and that further criminal procedures were not required, so I'm not satisfied that the time for the running of time—and I think I've passed on this before, or at

least I've had it brought to (44) my attention before—that the statutory time for procedures started at the time of the arrest. I'm not going to attempt to state exactly and go back and dig these time intervals out but I'm not going to adopt that concept, so the statutory period of time had not expired when the Governor issued his warrant on the request for extradition and the Court was so apprised of it, so it's our finding that that was valid and had been acted upon within the valid statutory period of time.

The writ of habeas corpus proceeding then raises and can raise certain issues and I don't believe all of them are really raised here. First of all, there's an attack on the validity of the complaint and warrant. I don't believe this is really an attack on whether or not the complaint sets forth the complaint of a violation of a statute of the State of Arizona. I have no showing that their statutes are so dissimilar from ours that it would be, probably, a valid averment under our statutes as set forth in their two counts, that they don't have any such statute, or that his does not cover an extraditable offense from Arizona.

The issue is raised as to the fact that there are two counts and they would appear to be inconsistent. I presume and assume that they would be under Michigan law and I (45) assume the same thing is true of Arizona that if the Respondent were charged with both of these, he could only be convicted of one. In other words, if he were entrusted with the property that he couldn't be then charged with having taken the property and stolen it, but it certainly doesn't shock me that there could be an averment of violations of two separate statutes in the same charge, and so I don't think the fact that they are perhaps and probably inconsistent means that they're invalid because they're set forth in the same information or same complaint.

*Excerpts from Habeas Corpus Hearing in
Bay County Circuit Court*

I don't find that the complaint and warrant then charges invalidly on the complaint and warrant.

Insofar as that indicates a lack of information sufficient to permit a probable cause it's my understanding that a presumption of validity is to be applied to the actions of the magistrate in taking the complaints and further that Arizona law would permit the supplementation of the bare bones of a complaint by other information such as testimony of time.

We've been submitted cases where the evidence as it goes to the jury would submit similar alternate findings. The fact that they're inconsistent doesn't mean that a jury can't beyond a reasonable doubt find a defendant guilty of one or the (46) other, so I don't think that is a valid argument, the fact that they are inconsistent indicates the lack of probable cause and the determination that there had been a crime committed in the alternative as set forth, it's my finding is not invalid.

The complaint and warrant as forwarded on to the Governor in our opinion is valid on its face. I believe that the Governor has a right to require additional information to go behind that warrant, especially in this area of the discretionary power, or at least the power even if it may not be entirely discretionary, the power that a governor has to issue or to not issue, that it is within his power to demand additional information over and beyond that.

It's complained that additional information furnished is insufficient. It may well be that if I were wanting additional information I'd want it more detailed than was furnished here. I might want a recital more of what the evidentiary facts would be, but apparently the Governor didn't request that and I don't think the issue as raised is sufficient to indicate that the material furnished to him was sufficient to mean that his determi-

*Excerpts from Habeas Corpus Hearing in
Bay County Circuit Court*

nation to rely upon the presumption of validity of the complaint and warrant even though supplemented with material that wasn't too extensive, that it was improper.

(47) Certainly, there has been an indication that the Arizona authorities, and I don't think this was shown to our Governor, but that additional information was so listed by our local authorities from Arizona authorities and that does go to the other issue and that is whether or not the Defendant is the person named in the warrant and the complaint is made here that the affidavit as furnished as to identity contains a bare bones recital that he is the same person and that it isn't fleshed out by showing what those evidentiary facts are that require that showing.

It is our opinion that the procedures here were sufficient to have identified the defendant as being that individual charged under all the circumstances, including a photograph that was forwarded on the affidavit of identity and the fact that we have no direct evidence indicating contra.

As to the other issue it's our opinion that there's been a sufficient showing of the validity of the charge, of the fact that the Defendant is the person identified and as being charged.

As to the other issue of whether or not it's shown that the Defendant was present in Arizona, or the converse, is a serious issue raised that he was not in Arizona. The (48) original complaint and warrant in specifying the 18th said "on or about" and that is ordinarily under common law in all the cases that I know of that the date of the offense is not ordinarily of the essence. There are certain circumstances, however, where it becomes important and in the case of an extradition it certainly becomes important. It is necessary to know when did

this offense occur since we do have the important issue, was the Defendant present there.

Presumably, then with the (sic) there averment that it was the 18th and the showing that the Defendant without doubt was here in the State of Michigan, was not therefore in Arizona, we would have a very serious issue in question as to whether or not how could he possibly be in Arizona. However, where there is an averment of a date, it can either be specified exactly by a bill of particulars or it can be modified by amendment and the question then is while the original complaint alleges the 18th, or the original information alleges the 18th and the proofs at trial, or subsequently show that it wasn't the 18th but actually some other date, but the date is subject to amendment even after trial absent some showing as to why it shouldn't be so amended in ordinary cases and I have nothing to indicate that we have anything not ordinarily amendable in this case, but over and beyond the issue as to his presence in (49) Arizona.

The amendment of the complaint, or the equivalent of a furnishment of a bill of particulars that it wasn't actually the 18th but it was actually the 3rd of December and I note there is no direct attack on his presence in Arizona at that time. The attack is on the effect of the showing that the actual date wouldn't have been the 18th but rather the 3rd, since the 18th is the date that can be amended and if it is amended and the offense can actually be shown to have been committed on the 3rd, the fact of the amendment in our opinion isn't such that it defeats further proceedings on the original complaint and warrant. However, we're back to the issue of—in other words, with a showing of the 18th, if this Court is shown that the offense is actually not on the 18th, 17th, 16th, or here the 3rd, and yet it's the same offense. The question for this Court to decide is when this offense occurred, was the Respondent

in Arizona and that's clear he wasn't there on the 18th. Therefore, whether or not this automatically decides it in view of the showing of the allegation here on the part of Arizona and with the amendment, however, as has been suggested we are on a procedure in reliance on the issuance of a Governor's warrant on a requisition from (50) Arizona with what may to our Governor be construed as immaterial deviation, and before this Court assumes that the Governor wishes to continue on the basis that it has been satisfactorily shown to him that the crime being charged was one where a defendant was in Arizona, that he should be apprised of the information that we have, that the alleged date is not the 18th but rather the 3rd, and that he should have the same information that we have, that the Defendant was here in Michigan on the 18th, or anything else and any other information that the Governor wants or deems necessary.

I think therefore that we should defer and give the Governor an opportunity to be informed of this variance on this same information that we have, that if he determines to withdraw this warrant, that's one thing, and if he refused then to issue another warrant, that would be a very definite change of circumstance, or if he were to withdraw this warrant and issue a new one, that would be another material change of circumstance and I don't think an extraordinary period of time should be provided in which this information is to be furnished to him to give him an opportunity to act and it would seem to me ten days would be an adequate period of time to get to the Governor this additional information to see whether he (51) wishes to withdraw this warrant and issue a new one or refuse to issue a new one or to require further proceedings before he would determine. If he elects to stand on his warrant as he has issued it that would be one thing and in that regard I will presume that is what he is intending to do—absent hearing something else that he intends to continue

the issuance of his warrant. Until that period of time is determined it would be my intent not to put the Petitioner to bond for the same reasons I expressed before. If after that ten days the Governor withdraws his warrant without issuing a new one I would intend to immediately to set a bond, and if he withdraws this warrant and issues another, I'll have to make a decision as to what we do on that.

I solicit comments.

MR. PENZIEN: The only comments I would have, your Honor, is that I don't know whether you had in mind the fact that I believe that next week is the Republican National Convention which Governor Milliken—

THE COURT: He may be on T.V.

MR. PENZIEN: And not available to the Defendant.

THE COURT: That's very practical. Let's face it however there are people assigned this problem and who

* * *

(Exchange between Bay County Prosecutor Eugene C. Penzien and Court concerning amendment of Arizona Complaint.)

(28)

THE COURT: The fact that the amended complaint and warrant has not been brought to the attention of the Governor, is that—

MR. PENZIEN (Interposing): No, and I submit, your Honor, that there is no need to do that. In the first place,

counsel is arguing that the Governor has bad information as to when the Defendant may have been in Arizona but I think you ought to remember what the Governor had was Arizona warrants that gave the date of offense as December 18th. It wasn't reversed. The warrant that the Governor had in front of him said December 11th and this warrant says December 18th. The Governor was operating on a basis of an Arizona warrant that said December 18th.

THE COURT: What's the significance of December 11th?

MR. PENZIEN: December — I'm sorry. It's December 3rd. 3rd is the one issued, made reference to, so I presumably — if Governor Milliken ordered on the basis of the warrants he had in front of him, he would all the more likely sign a warrant of extradition on the basis of one that said the offense occurred in Arizona on December 3rd, so that's the only purpose we even had in asking and pointing out to Arizona that there was an error and it's obviously an error in someone writing (29) down a date, that or typing in a date, the only purpose for that was that if Mr. Doran was going to argue that their warrant proved he wasn't there on the date that they say he was there, is the date of the offense that we would have contradicting evidence? He hasn't argued that.

Incidentally, in terms that this was a complaint about the sufficiency of the evidence, Mr. Doran has admitted to the Court that that's his name and he has also used the name of Ted Foster which is a name that is listed in the Arizona warrant.

THE COURT: He has not admitted specifically that he's the person charged.

MR. PENZIEN: No, but I believe we could go to the records and show you that he has stated — in any event, he

hasn't argued that he wasn't there and he has not offered any evidence that he wasn't there.

THE COURT: He's argued continually that he wasn't in Arizona on the 18th, the date of the original complaint.

MR. PENZIEN: Well, he really wasn't arguing that, but I wouldn't argue that with him anyway.

THE COURT: That was one of the things that seemed to bother me the most, was his argument that that was true, that he wasn't in Arizona and on that date.

(30)

MR. PENZIEN: What I mean is that he has not offered any evidence and I would not argue it with him, if he did, because I know as a fact he was in our jail on December 18th.

THE COURT: Is that the arrest date, the 18th?

MR. PENZIEN: Yes.

THE COURT: The Governor's Warrant is subject to being recalled; is it not?

MR. PENZIEN: By Governor Milliken.

THE COURT: That's what I mean.

MR. PENZIEN: Right.

THE COURT: If he determined that the Respondent was in Arizona and this Court is satisfied otherwise, it's my understanding that this writ would be controlling.

MR. PENZIEN: That's correct.

One more thing, like I said, I don't think I need to argue on the basis of this record that we have acted improperly as far as the Bay County Prosecutor's Office, but I want to point out because I'm certain that we'll be up further unless the Court releases Mr. Doran, that Miss Cummins when she stands here accusing me of abusing the authority of my Office has available in this very courtroom a witness who could testify as to what the reasons were for the issuance of the warrant against Mr. Doran. She didn't call that person and yet she would * * *

* * *

*Order Denying Petition for Writ
of Habeas Corpus*

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

IN THE MATTER OF:
THE EXTRADITION OF HAROLD
WILLIAM DORAN TO THE
STATE OF ARIZONA

FILE NO.
76-207 PZ

ORDER DENYING WRIT OF HABEAS CORPUS

At a session of said Court held in the Courthouse
in the City of Bay City, County of Bay, State of
Michigan on the 18th day of August, 1976.

PRESENT: HONORABLE JOHN X. THEILER,
CIRCUIT JUDGE

This matter came on to be heard before this Court on August 10, 1976 and was adjourned to August 13, 1976 due to the press of other business before the Court. On August 13, 1976 the Court heard arguments of counsel and gave its opinion on the record in open court.

NOW, THEREFORE, for the reasons indicated upon the record in open court,

IT IS ORDERED:

A. That the application for writ of habeas corpus for the purpose of preventing the extradition of Harold William Doran to the State of Arizona be and it is hereby denied.

*Order Denying Petition for Writ
of Habeas Corpus*

B. A stay of extradition is hereby granted for a period of twenty days from and after the date of this order.

JOHN X. THEILER /s/
JOHN X. THEILER, Circuit Judge

APPROVED AS TO FORM:
WILLIAM CAPRATHE /s/
WILLIAM CAPRATHE,
Attorney for Harold William Doran

(Attestation Deleted)

Appointment of Attorney

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

HAROLD WILLIAM DORAN Appellant	
-vs-	
STATE OF ARIZONA, Governor of Arizona, Attorney General for State of Michigan, Prosecuting Attorney for the County of Bay, Governor of the State of Michigan, Bay County Sheriff, and Honorable District Judge Arthur E. Higgs	
	Appellees

PEOPLE OF THE STATE OF MICHIGAN	
Plaintiff	
-vs-	
HAROLD WILLIAM DORAN Defendant	

APPOINTMENT OF ATTORNEY

Proper showing having been made to the Court that the Defendant is unable to obtain counsel and is entitled to have an attorney appointed to represent him in the appeal of this proceeding and that the Public Defender's Office has indicated that they need assistance of outside counsel,

IT IS HEREBY ORDERED:

That the State Appellate Defender's Office, an Attorney at Law, whose business address is Third Floor, North Tower,

File No. 76-207-T

***Order Dismissing Petition
for Writ of Habeas Corpus***

1200 Sixth Avenue, Detroit, Michigan 48226, be assigned as appellate counsel for said defendant, to assist the Bay County Public Defender's Office in representing Petitioner. This Order to be effective as of August 10, 1976.

John X. Theiler /s/
JOHN X THEILER,
CIRCUIT JUDGE

Dated this 25th day of August, 1976.

**COURT OF APPEALS ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS**

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the 18th day of November in the year of our Lord one thousand nine hundred and seventy-six.

Present the Honorable
Vincent J. Brennan,
Presiding Judge,
S. Jerome Bronson,
William R. Beasley,
Judges.

In this cause a complaint for habeas corpus, motion for an order to show cause, a motion for stay of extradition and motion for bond pending appeal are filed by Harold William Doran, and nothing in opposition thereto having been filed, and due consideration of the respective matters having been had by the Court,

IT IS ORDERED that the motion for an order to show

*Order Dismissing Petition for Writ
of Habeas Corpus*

cause be and the same is hereby DENIED, for lack of merit in the grounds presented.

IT IS FURTHER ORDERED that the complaint for habeas corpus be and the same is hereby DISMISSED.

IT IS FURTHER ORDERED that motion for stay of extradition and the motion for bond pending appeal be, and the same are hereby DENIED.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 22nd day of November, in the year of our Lord one thousand nine hundred and seventy-six.

(s) Ronald L. Dzierbicki
Clerk

*Order Granting Application for
Leave to Appeal*

**SUPREME COURT ORDER GRANTING APPLICATION
FOR LEAVE TO APPEAL**
(Filed November 3, 1976)

At A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 1st day of November in the year of our Lord one thousand nine hundred and seventy-six.

Present the Honorable

Thomas Giles Kavanagh,
Chief Justice,
G. Mennen Williams,
Charles L. Levin,
Mary S. Coleman,
John W. Fitzgerald,
Lawrence B. Lindemer,
James L. Ryan,
Associate Justices.

On order of the Court, the delayed application for leave to appeal, motion for immediate consideration, motion for stay of extradition, and motion for bond are considered.

The motion for immediate consideration is hereby GRANTED. The application for leave to appeal is hereby GRANTED as to the issues raised in defendant's application. The motions for stay of extradition and bond are hereby DENIED.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it

is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 3rd day of November in the year of our Lord one thousand nine hundred and seventy-six.

(s) Corbin R. Davis,
Deputy Clerk

MICHIGAN SUPREME COURT OPINION**IN THE MATTER OF DORAN
(PEOPLE v DORAN)**

Docket No. 58698. Argued June 9, 1977 (Calendar No. 18).—Decided October 4, 1977.

Harold W. Doran is detained in the Bay County jail on a governor's warrant for extradition to Arizona on alternative charges of theft of a motor vehicle or theft by embezzlement. He brought an action for *habeas corpus* in the Bay Circuit Court, John X. Theiler, J., to contest his detention, and the action was dismissed. The Court of Appeals, V.J. Brennan, P.J., and Bronson and Beasley, JJ., denied his application for leave to appeal (Docket No. 28507), and dismissed his subsequent complaint for *habeas corpus* in the Court of Appeals (Docket No. 30516). Doran appeals, asserting that he may not be extradited, because the governor's warrant for his extradition was issued more than 90 days after his arrest, and that the warrant and affidavits supporting the requisition by the Governor of Arizona are insufficient because they do not show probable cause. *Held*:

1. The Uniform Criminal Extradition Act limits the period of confinement following arrest as a fugitive to a maximum of 90 days. The purpose of this limit is to prevent unreasonably lengthy periods of confinement pending consummation of extradition proceedings by the demanding state, but the act was not intended to restrict the period within which the Governor may issue his rendition warrant. Although a fugitive may be entitled to discharge from confinement or bail after 90 days, he may nevertheless be re-arrested and extradited pursuant to a valid governor's warrant issued subsequent to the 90-day period.

2. The State of Michigan may not arrest, detain, and render to the demanding state a person accused of crime unless the

demanding state submits an indictment or judicial determination of probable cause, or where there has been none, adequate factual affidavits reflecting probable cause. The affidavits should be in such form as would support a finding of probable cause for the issuance of an arrest or search warrant under the Fourth Amendment decisions of the Supreme Court of the United States. The extradition statute requires that the indictment, information or affidavit made before a magistrate of the demanding state must substantially charge the person demanded with having committed a crime under the law of that state. Where there has been no indictment or judicial determination of probable cause in the demanding state, a requirement that the demanding state's affidavit set forth facts which support a determination of probable cause safeguards citizens and other persons found in the asylum state against abuse of the extradition process. The holding in this case does not apply to an indictment, but only to an affidavit.

3. In the case at bar, there is no indictment or document reflecting a prior judicial determination of probable cause. The Arizona complaint and arrest warrant are both phrased in conclusory language which simply mirrors the language of the Arizona statutes, and their supporting affidavits fail to set out facts which could justify a Fourth Amendment finding of probable cause to charge a crime. The defect has not been cured. Mr. Doran has been in custody since December 18, 1975.

The judgment of the trial court is reversed and the release of the prisoner is ordered forthwith.

REFERENCES FOR POINTS IN HEADNOTES

[1] 31 Am Jur 2d, Extradition §§ 60-63.

[2, 4, 5] 31 Am Jur 2d, Extradition § 53.

[3] 31 Am Jur 2d, Extradition §§ 36, 39.

1. EXTRADITION—GOVERNOR'S WARRANT—CONFINEMENT—90-DAY LIMIT—UNIFORM CRIMINAL EXTRADITION ACT.

A fugitive is entitled under the Uniform Criminal Extradition Act to be discharged from confinement or bail 90 days after his arrest as a fugitive if no valid governor's warrant has issued; he may, nevertheless, be re-arrested and extradited pursuant to a valid governor's warrant issued subsequent to the 90-day period (MCL 780.14, 780.16; MSA 28.1285[14], 28.1285[16]).

2. EXTRADITION—PROBABLE CAUSE—GOVERNOR'S REQUISITION—AFFIDAVIT.

A governor's requisition for the extradition of a fugitive must be supported by a showing of probable cause; absent a grand jury indictment or a judicial determination of probable cause, the affidavit accompanying the governor's requisition should contain more than conclusory statements and should be in a form which would support an arrest or search warrant under the Fourth Amendment decisions of the Supreme Court of the United States (US Const, Am IV).

3. EXTRADITION—GOVERNOR'S REQUISITION—AFFIDAVIT—PROBABLE CAUSE.

The Uniform Criminal Extradition Act requires that the indictment, information or affidavit made before a magistrate of the demanding state must substantially charge the person demanded with having committed a crime under the law of that state (MCL 780.3; MSA 28.1285[3]).

4. EXTRADITION—INDICTMENT—PROBABLE CAUSE.

The State of Michigan may not arrest, detain, and render to the demanding state a person accused of a crime unless the demanding state submits an indictment or judicial determination

of probable cause, or where there has been none, adequate factual affidavits reflecting probable cause.

5. EXTRADITION—GOVERNOR'S REQUISITION— PROBABLE CAUSE.

An Arizona complaint and arrest warrant which are phrased in conclusory language which simply mirrors the language of the Arizona statutes, and supporting affidavits which fail to set out facts which could justify a Fourth Amendment finding of probable cause to charge a crime are not sufficient ground for extradition of a fugitive to Arizona.

Eugene C. Penzien, Prosecuting Attorney, for the people.

*State Appellate Defender Office (by Kathleen M. Cummins)
for Harold W. Doran.*

BLAIR MOODY, JR., J. On December 18, 1975, defendant was arrested in Bay City, Michigan, and charged with receiving and concealing stolen property. MCLA 750.535; MSA 28.803. The charge arose out of defendant's possession of a truck in which he had driven to Michigan from Arizona.

The Bay City Police immediately notified the authorities in Maricopa County (Phoenix), Arizona. On January 7, 1976, the Arizona authorities issued a warrant for defendant's arrest charging theft of a motor vehicle or, in the alternative, theft by embezzlement. ARS 13-672(A), 13-1645, 13-661—13-663, 13-671(A); ARS 13-682, 13-688.

On January 12, 1976, defendant was arraigned in Michigan as a fugitive. The Bay City charge was eventually dismissed. However, the time of defendant's confinement as a fugitive was extended by the Bay County magistrate to allow additional time for his arrest to be made under a warrant of the Governor of Michigan upon a requisition of Arizona's Governor.

The Uniform Criminal Extradition Act, of which both Michigan and Arizona are signatories, MCLA 780.1—MCLA 780.31; MSA 28.1285(1)—28.1285(31); ARS 13-1301—ARS 13-1328, limits the period of confinement following arrest as a fugitive to 30 days with a permissive extension period of 60 days. MCLA 780.14, 780.16; MSA 28.1285(14), 28.1285(16).

On February 11, 1976, Arizona issued a requisition for extradition. The requisition was accompanied by the original complaint and warrant, plus two supporting affidavits. On March 22, 1976, a governor's warrant was issued. Defendant was arraigned thereon on March 29, 1976, some 102 days after his arrest on the Bay County charge, but well within 90 days after the issuance of the Arizona warrant on January 7, 1976, and defendant's arraignment on the fugitive warrant on January 12, 1976.

The defendant twice petitioned the arraigning court for a writ of *habeas corpus* attacking the validity of the governor's warrant on the grounds that it was not issued in conformity with the Uniform Criminal Extradition Act. That court denied both writs. The Court of Appeals denied both defendant's application for leave to appeal the first *habeas corpus* petition and defendant's original *habeas corpus* petition subsequently filed in the Court of Appeals. This court granted leave to appeal on November 1, 1976. 397 Mich 886 (1976).

I

Defendant initially maintains that he must be discharged because the governor's warrant issued more than 90 days after his original arrest. Defendant claims that while he was nominally arrested on December 18, 1975, on the Michigan charge of receiving and concealing stolen property, that arrest was a pretext. In actuality, defendant contends he was held as a

fugitive. Therefore, he is entitled to be discharged since more than 90 days elapsed after his original arrest before the governor's warrant issued on March 22, 1976.

We do not agree. Even if the defendant is correct in his factual premise that the Michigan charge was a pretext and he was entitled to be released after 90 days, he is still subject to extradition.

There is ample authority for the proposition that although a fugitive is entitled to be discharged from confinement or bail upon expiration of the 90-day period, he or she may, nevertheless, be extradited pursuant to a valid governor's warrant issued subsequent to the expiration of the 90-day period. *People ex rel Green v Nenna*, 53 Misc 2d 525; 279 NYS2d 324 (1965); *aff'd* 24 AD2d 936; 264 NYS2d 211 (1965), *aff'd* 17 NY2d 815; 271 NYS2d 267; 218 NE2d 311 (1966); *Miller v Warden, Baltimore City Jail*, 14 Md App 377; 287 A2d 57 (1972).

In *People ex rel Gummow v Larson*, 35 Ill 2d 280, 282; 220 NE2d 165, 167 (1966), the court reasoned thus:

"The purpose of these sections of the extradition law is to prevent unreasonably lengthy periods of confinement of fugitives pending consummation of extradition proceedings by the demanding State. [Citations omitted.] There is, however, no indication of any legislative intent to restrict the period within which the Governor . . . may issue his rendition warrant to the period within which the court which issues the fugitive warrant may commit the accused or require him to give bond."

Therefore, even if defendant was entitled to be released from the confinement which followed his original arrest, it

is clear that he could be rearrested on the strength of the subsequent governor's warrant.

II

Defendant next maintains that he cannot be extradited where the demanding state's warrant and affidavits supporting the requisition for the Michigan governor's warrant do not reflect an adequate showing of probable cause.

We agree. In *Kirkland v Preston*, 128 US App DC 148, 152, 154-155; 385 F2d 670, 674, 676-677 (1967), the United States Court of Appeals for the District of Columbia held that a governor's requisition must be supported by a showing of probable cause. Absent a grand jury indictment or a judicial determination of probable cause, the affidavit accompanying the governor's requisition should contain more than conclusory statements. The affidavit should be in such form as would support a finding of probable cause for the issuance of an arrest or search warrant under the Fourth Amendment decisions of the United States Supreme Court.

In the case at bar, there is no indictment or document reflecting a prior judicial determination of probable cause. The Arizona complaint^[1] and arrest warrant^[2] are phrased in

[1]

ARIZONA COMPLAINT

EXHIBIT A

East Phoenix I Precinct, Maricopa County,
State of Arizona

STATE OF ARIZONA,
Plaintiff,

HAROLD WILLIAM DORAN aka
TED FOSTER,
Defendant(s).

(FELONY)

THEFT OF MOTOR VEHICLE
OR IN THE ALTERNATIVE:
THEFT BY EMBEZZLEMENT

The complainant herein personally appears and, being duly sworn, complains (on information and belief) against

HAROLD WILLIAM DORAN aka TED FOSTER

charging that in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER took from WAYNE W. KAHLER a motor vehicle described as follows, to-wit: 1973 FORD PICKUP, $\frac{1}{2}$ TON, F100, 1975 California License Number 188MGL, VIN 10GCQ67368, with the intent to permanently deprive WAYNE W. KAHLER of such motor vehicle, all in violation of ARS, Sec. 13-672 (A) & (B), as amended 1975 and 13-1645.

OR IN THE ALTERNATIVE: THEFT BY EMBEZZLEMENT

That in EAST PHOENIX I Precinct, Maricopa County, Arizona: on or about the 18th day of DECEMBER, 1975, HAROLD WILLIAM DORAN aka TED FOSTER committed theft by embezzling from WAYNE W. KAHLER property, to-wit: One (1) 1973 FORD $\frac{1}{2}$ TON PICKUP, F100, VIN 10GCQ67368, 1975 California License Number 188MGL, of the value of over \$100.00, all in violation of ARS, Sec. 13-681, 13-682, as amended 1972, and 13-688, 13-671, 13-661, 13-662, 13-663.

(s) Richard Bishop
Complainant C/L

Subscribed and sworn to before me on 1-7-76.

(s) Mary Jo Dixman
Title, J.P.

It is requested that a (X) Warrant, () summons be issued.

conclusory language which simply mirrors the language of the pertinent Arizona statutes. More importantly, the two

It is, is not requested that Defendant appear for fingerprints and photograph.

Norval Jesperson,
Deputy County Attorney

[2]

ARIZONA WARRANT FOR ARREST
EXHIBIT B

East Phx. No. 1 Precinct, Maricopa County,
State of Arizona

THE STATE OF ARIZONA,
Plaintiff,

vs.

HAROLD WILLIAM DORAN aka
TED FOSTER
Defendant(s).

TO ALL PEACE OFFICERS OF THE STATE OF ARIZONA:

A complaint has been filed in this court against HAROLD WILLIAM DORAN aka TED FOSTER charging that in East No. I Precinct, Maricopa County, Arizona, on or about the 18th day of Dec., 1975, the crime of Felony, to-wit: THEFT OF MOTOR VEHICLE OR IN THE ALTERNATIVE: THEFT BY EMBEZZLEMENT, has been committed.

I have found reasonable cause to believe that such offense(s) were committed and that the accused committed them, and reason to believe that the accused will not appear in response to a summons, or that a warrant is otherwise appropriate.

YOU ARE THEREFORE COMMANDED to arrest the accused and bring him before this court to answer the charges. If this court is unavailable, or if the arrest is made in another county, you shall take him before the nearest or most accessible magistrate. You may release him if he posts a secured appearance bond in the amount of dollars (\$).

(s) Mary Jo Dixman
Justice of the Peace

(Date) Jan. 7, 1976.

supporting affidavits fail to set out facts which could justify a Fourth Amendment finding of probable cause for charging defendant with a crime.

The complaining police officer's initial affidavit^[3] in support
EXHIBIT D

**IN RE: EXTRADITION OF
 HAROLD WILLIAM DORAN aka TED FOSTER**

STATE OF ARIZONA

ss.

COUNTY OF MARICOPA

Thomas C. Bradley, No. 456, being duly sworn does depose and say that he is the Officer in Criminal No. 9204 versus Harold William Doran aka Ted Foster; that he has been shown a photograph dated 12/18/75, marked Exhibit "D" by reference attached and made a part hereof; that the person photographed is the same person who was charged with the crime of Theft of Motor Vehicle, OR IN THE ALTERNATIVE: Theft by Embezzlement, a felony, within the jurisdiction of EAST PHOENIX I Justice Court Precinct, County of Maricopa, as charged in the above-numbered cause.

FURTHER deponeth sayeth not.

Dated this 3rd day of February, 1976.

(s) Thomas C. Bradley
 Thomas C. Bradley No. 456

Subscribed and sworn to by Thomas C. Bradley, before Beverly R. Parisi, a Notary Public, this 3rd day of February, 1976.

(s) Beverly R. Parisi
 Notary Public
 My Commission Expires:
 March 11, 1977
 [Photo attached]

of the arrest warrant is factually void:

[3]

The second affidavit involved an identification of a photograph of the defendant:

"EXHIBIT C

"County of Maricopa, State of Arizona

"The undersigned hereby declares:

"That he is currently employed as a peace officer for the City of Phoenix Police Department, Phoenix, Arizona.

"That, pursuant to his employment he has been assigned to investigate allegations the HAROLD WILLIAM DORAN aka TED FOSTER did violate Section(s) § 13-672(A)(B) and 13-1645.

"That, pursuant to said assignment, your declarant:

"1. Has contacted persons having knowledge of said offense and has prepared written reports and statements; and

"2. Has received and read written reports and statements prepared by others, known by your declarant to be law enforcement officers;

"All of which are included in the report consisting of 9 pages, which is presently an official record of this Department.

"That each of these documents is presently an official record of a law enforcement agency.

"WHEREFORE, your declarant prays that a warrant issue for the herein-above-named defendant, that he be dealt with according to law.

"I declare under penalty of perjury that the foregoing is true and correct.

"Executed on this 3rd day of February, 1976, in Maricopa County.

"(s) Thomas C. Bradley
Declarant
Thomas Bradley No. 456
"City of Phoenix Police Dept.,
Phx., Az.
Address of Law Enforcement
Agency

"Subscribed and sworn to me this 3rd day of February, 1976.

"(s) Beverly R. Parisi
Notary Public
My Commission Expires:
March 11, 1977"

Kirkland v Preston, supra, discussed at length the requirements for Federal rendition. The Federal statute requires "an indictment found or an affidavit made before a magistrate * * *, charging the person demanded with having committed treason, felony, or other crime". 18 USC 3182.

The Michigan statute, based on the Uniform Criminal Extradition Act, *supra*, provides for the furnishing of "certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, and the warrant issued thereupon, stating the offense with which the accused is charged". Significantly the statute further provides that the "indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state". MCLA 780.3; MSA 28.1285(3). (Emphasis added.)

The police officer's affidavit in *Kirkland* read, in its pertinent part, as follows:

"* * * [O]n the 23rd day of July A.D., 1965, in the County and District aforesaid [Dade County] on Oliver Lee Kirkland & Elizabeth Maria Smith DID THEN AND THERE: unlawfully, wilfully, maliciously and feloniously set fire to and burn or cause to be burned a certain building, to wit: The Hut Bar, located at 2280 S. W. 32nd Avenue, City of Miami, Dade County, Florida, a further and more particular description of said bar being to the affiant unknown, the said bar being the property of one Fredrich Ritter." *Kirkland, supra*, 150; 385 F2d 672.

The *Kirkland* court found the warrant factually deficient and stated its holding thus:

"We hold that, for purposes of extradition, the section 3182 'affidavit' does not succeed in 'charging' a crime unless it sets out facts which justify a Fourth Amendment finding of probable cause."

The *Kirkland* result is also consistent with the Uniform Act's requirement that the indictment, information or affidavit "substantially charge" the person demanded with having committed a crime under the laws of the demanding state.

Judge J. Skelly Wright speaking for the court in *Kirkland* eloquently set forth at length its rationale for refusing extradition on the basis of an insufficient affidavit:

"There is no reason why the Fourth Amendment, which governs arrests, should not govern extradition arrests. Under its familiar doctrine arrests must be preceded by a finding of probable cause. When an extradition demand is accompanied by an indictment, that document embodies a grand jury's judgment that constitutional probable cause exists. But when the extradition papers rely on a mere affidavit, even where supported by a warrant

of arrest, there is no assurance of probable cause unless it is spelled out in the affidavit itself. Thus Fourth Amendment considerations require that before a person can be extradited on a Section 3182 affidavit the authorities in the asylum state must be satisfied that the affidavit shows probable cause.

• • •

"The law appreciates the hardship which extradition can involve: not only the suspension of one's liberty, but his deportation from the state in which he lives into another jurisdiction which may be hundreds of miles from his home. The law accordingly surrounds the accused with considerable procedural protection to stave off wrongful rendition. It is consistent with this concern for the accused's just treatment to recognize his right to require official confirmation of probable cause in the asylum state before extradition. This right to probable cause confirmation seems especially appropriate in view of the fact that the accused will have no access to an evidentiary preliminary hearing on probable cause until he finally arrives in the accusing jurisdiction.

"In addition, the interests of the asylum state are advanced by its own probable cause determination. For it would be highhanded to compel that jurisdiction to lend its coercive authority, and the processes of its law, against even its own citizens in aid of an enterprise the key details of which remain in the dark. If, as here, it turns out that the prosecution against the fugitive is unfounded, the asylum state will have expended its resources and given the legitimizing stamp of its judiciary to a cause which is at best futile, at worst arbitrary.

"Recognizing a probable cause requirement in Section 3182, moreover, conflicts with no compelling interests

elsewhere in the legal system. If the demanding state does have probable cause data, it will be no real inconvenience to record this evidence in the extradition papers. Documenting probable cause in an affidavit is what the policeman in many jurisdictions, including the District of Columbia, must do if he is to secure an ordinary warrant for an arrest or search. And governors, or *habeas corpus* judges, will hardly be significantly burdened by having to study written submissions for probable cause in extradition cases.

"From all these considerations the court draws the conclusion that the terms of 18 USC 3182 are not met unless the affidavit indicates to the asylum state executive that there is probable cause for believing the accused guilty and that *habeas corpus* is the appropriate remedy to test the validity of his judgment. Since the Florida Section 3182 affidavit was insufficient and this defect was not cured in the time provided by the court, release of the prisoners was mandatory." (Footnotes omitted.) *Kirkland, supra*, 154-155; 385 F2d 676-677.

The *Kirkland v Preston* view that the Fourth Amendment applies to extradition warrants has been adopted by the United States Courts of Appeals for the First and Third Circuits. See *Ierardi v Gunter*, 528 F2d 929, 930-931 (CA 1, 1976) (where the court concluded that *Gerstein v Pugh*, 420 US 103; 95 S Ct 854; 43 L Ed 2d 54 [1975], "requires a judicial determination of probable cause as a prerequisite to interstate extradition."); and *United States ex rel Grano v Anderson*, 446 F2d 272 (CA 3, 1971).

The *Kirkland* holding has also been adopted by the Supreme Courts of Colorado and Nevada, a New York intermediate appellate court and Connecticut trial court. See *United States ex rel Maybery v Yeager*, 321 F Supp 199, 211 (D NJ, 1971);

Pippin v Leach, 188 Colo 385; 534 P2d 1193 (1975) (refusing to extradite to Michigan because the affidavit, "replete with conclusions and bald allegations of criminal conduct, without supporting facts", failed to "set forth some of the underlying circumstances surrounding the crime charged, as well as an adequate identification of the source or sources of the information set forth in the affidavit."); *Sheriff v Thompson*, 85 Nev 211; 452 P2d 911 (1969); *People ex rel Cooper v Lombard*, 45 AD2d 928; 357 NYS2d 323 (New York Supreme Court, Appellate Division, Fourth Department, 1974) ("the asylum State has a vital interest in the liberty of its citizens and other inhabitants, and since it is only a slight burden on a demanding State to show probable cause for the issuance of a warrant of arrest . . . we join the Second Department in adopting the holding of *Kirkland v Preston*."); *Brode v Power*, 31 Conn Sup 411; 332 A2d 376 (1974).^[4]

In *Williams v Wayne County Sheriff*, 395 Mich 204, 238; 235 NW2d 552 (1975), we adverted to but did not decide the instant question. An equally divided Court affirmed the denial of a petition for writ of *habeas corpus* sought by a Michigan resident resisting extradition. Three Justices of this Court

[4]

The Supreme Courts of Illinois, Indiana and South Dakota have rejected the *Kirkland v Preston* view on the ground that the asylum state should not inquire into the regularity of the papers issued by the demanding state. It appears that there are other cases going both ways and, no doubt, there are other rationales.

See *People ex rel Kubala v Woods*, 52 Ill 2d 48; 284 NE2d 286, 290 (1972) (extraditing to Michigan on a conclusory affidavit; there were factual affidavits but they were made before a notary public and not a magistrate and, therefore, said the court, "will not support the issuance of the rendition warrant"; the court recognized that "it is highly desirable that the affidavit charging a crime in an extradition proceeding recite sufficient facts to show probable cause"); *Bailey v State*, 260 Ind 448, 452; 296 NE2d 422, 425 (1973); *Wellington v State*, SD; 238 NW2d 499, 503 (1976).

stated that the courts of this state will not look behind the face of an *indictment*. Three Justices stated that *Kirkland v Preston* "held that a requisition affidavit cannot constitutionally support a rendition arrest unless that affidavit sets out facts which justify a Fourth Amendment finding of probable cause" and would have allowed plaintiff to introduce proofs tending to show that the indictment was a forgery.

The court in *Kirkland v Preston*, distinguishing between an indictment and an affidavit, indicated that its holding would not extend to an indictment. Our holding in the instant case does not apply to an indictment. Like the court in *Kirkland*, our holding only applies to an *affidavit*.

In this state, although the statute provides that an arrest warrant shall issue "[i]f it appears from such examination" that an offense has in fact been committed, the practice has not been to conduct an examination to establish probable cause. *People v Burrill*, 391 Mich 124, 129; 214 NW2d 823 (1974). MCLA 766.3; MSA 28.921. Here, however in all felony and some misdemeanor cases the accused is entitled to a prompt preliminary examination. It is not clear whether there was an independent judicial determination of probable cause made by the Arizona magistrate before issuance of the governor's requisition.

However, the question presented by this case is broader than whether the Federal or state statutes provide for a showing of probable cause. The Fourth Amendment permits an arrest only on probable cause. Here there has been no showing of probable cause, only conclusory statements in an affidavit. In the light of the Michigan practice of issuing arrest warrants without requiring a showing of probable cause, there is no reason to assume that the Arizona affidavit was made upon a showing, not of record, of probable cause.

While the invalidity of an arrest warrant does not affect the jurisdiction of a court to try the charge for which the offender was arrested, evidence seized incident to an arrest pursuant to an invalid arrest warrant will be suppressed unless the arresting officer himself had factual information constituting probable cause for arrest. *People v Burrill, supra*, 132-136. Here, the Michigan authorities have insufficient factual information constituting probable cause to detain or render the defendant on the Arizona charge.

To be sure, “[t]he guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition”. MCLA 780.19; MSA 28.1285(19). However, this statute must be construed consistently with the Fourth Amendment preclusion of arrest and detention without probable cause. It is not suggested that the Michigan courts inquire into the underlying facts. It is determined rather that Michigan may not arrest, detain and render to the demanding state a person accused of a crime unless that state submits an indictment or a judicial determination of probable cause or adequate factual affidavit(s) reflecting probable cause.

Where there has been no indictment or judicial determination of probable cause in the demanding state, a requirement that the demanding state's affidavit set forth facts which support a determination of probable cause safeguards citizens and other persons found in the asylum state against abuse of the extradition process.

The Arizona warrant and supporting affidavit(s) are obviously insufficient and this defect has not been cured. The

trial court is reversed and the release of the prisoner (defendant) is ordered forthwith.^[5]

KAVANAGH, C.J., and WILLIAMS, LEVIN, COLEMAN, FITZGERALD, and RYAN, JJ., concurred with BLAIR MOODY, JR., J.

[5]

In *Ierardi, supra*, the First Circuit granted *habeas corpus* relief and dismissed the prisoner from the custody of the governor's warrant. The federal proceedings were instituted after the prisoner had failed to obtain relief from the Supreme Judicial Court of Massachusetts. The First Circuit went further than the District of Columbia Circuit by requiring a judicial determination of probable cause.

In *Grano supra*, the Third Circuit proceedings also were instituted after the prisoner had exhausted his state remedies. The district court allowed the demanding state to submit supplemental affidavits and on that basis found probable cause. The Third Circuit affirmed that finding, one judge dissenting on the ground that the governor of the demanding state should reconsider his requisition on the supplemented record before the asylum state acts on his otherwise deficient demand.

In *Kirkland v Preston, supra*, the District of Columbia Circuit released the prisoners after the Florida authorities failed to cure the defective affidavit.

The defendant in this case has been in custody since December 18, 1975; we believe it appropriate that he be released.

MICHIGAN SUPREME COURT FINAL PROCESS

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room in the City of Lansing, on the 4th day of October in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable

THOMAS GILES KAVANAGH,
Chief Justice,

G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v HAROLD WILLIAM DORAN, Defendant-Appellant.	58698
------------------------------------------------------------------------------------------------------------------	-------

This cause having been brought to this Court by appeal from the decision of the Court of Appeals and having been argued by counsel and due deliberation had thereon by the Court, IT IS HEREBY ORDERED that the judgments of the Court of Appeals and the Circuit Court for the County of Bay are REVERSED and defendant is ordered RELEASED from custody forthwith. This final process is entered and issued this date pursuant to GCR 1963, 866.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 4th day of October in the year of our Lord one thousand nine hundred and seventy-seven.

Corbin R. Davis /s/
Deputy Clerk

Application for Rehearing

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff-Appellee,
v
HAROLD W. DORAN,
Defendant-Appellant.

Supreme Court
No. 58698
Court of Appeals
Nos. 28507
and 30516
Lower Court
No. 76-207-T

APPLICATION FOR REHEARING

Now comes the People of the State of Michigan, Plaintiff-Appellee herein, through its attorneys, FRANK J. KELLEY, Attorney General for the State of Michigan, Robert A. Derengoski, Solicitor General, and John A. Wilson, Assistant Attorney General, and pursuant to 1963 GCR 864.4, makes application to this Court for rehearing, stating in support thereof the following:

1. On October 4, 1977 this Honorable Court issued an opinion in the matter of *People of the State of Michigan v Harold W. Doran*, Michigan Supreme Court Docket No. 58698.
2. The decision held that in extradition cases law enforcement officials in the State of Michigan cannot arrest, or return an individual to the demanding state unless the demanding state submits an affidavit which, under the Fourth Amendment to the United States Constitution, shows facts which establish probable cause to believe that the individual committed a crime under the laws of the demanding state.
3. The court's decision failed to consider other authorities, not mentioned in the Court's opinion, which are contrary to

Application for Rehearing

the holding of the Court. *In re Otis Golden*, 65 Cal App 3d 789, Cal Rptr (1977) appeal dismissed and *cert den sub nom; Golden v California*, US, SCt, LED 2d, 46 USLW 3185, 22 Crim L Rptr 4014 (Oct 4, 1977); *DeGenna v Grasso*, 413 F Supp 427 (D Conn, 1976) *aff'd* 426 US 913; 96 SCt 2617; 49 LED 2d 368 (1976); *Garrison v Smith*, 413 F Supp 747 (ND Miss, 1976).

4. The opinion did not discuss the potential conflicts between its holding and the mandate of US Const, art 4, § 2, clause 2.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

By: JOHN A. WILSON /s/
John A. Wilson (P22407)
Assistant Attorney General

Attorneys for Plaintiff-Appellee
Criminal Division
Office of Attorney General
The Law Building
525 W. Ottawa Street
Lansing, MI 48913
(517) 373-1120

Dated: October 24, 1977

*Application for Rehearing***STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee.	Supreme Court No. 58698
v	
HAROLD W. DORAN, Defendant-Appellant.	Court of Appeals Nos. 28507 and 30516 Lower Court No. 76-207-T

**AFFIDAVIT IN SUPPORT OF
MOTION FOR REHEARING**

John A. Wilson, being first duly sworn, deposes and says that he has read the foregoing and it is true and correct to the best of his knowledge and belief.

JOHN A. WILSON /s/
Assistant Attorney General

Attorneys for Plaintiff-Appellee
Criminal Division
Office of Attorney General
The Law Building
525 W. Ottawa Street
Lansing, MI 48913
(517) 373-1120

Subscribed and sworn to before me
this 24th day of October, 1977.

LINDA DROSTE /s/
Linda Droste, Notary Public
Ingham County, Michigan
My Commission Expires 2-13-78

*Objections to Application for Rehearing***STATE OF MICHIGAN
IN THE SUPREME COURT**

(Court of Appeals Nos. 28507 and 30516; Lower Court
No. 76-207-T)

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	Supreme Court No. 58698
vs.	
HAROLD DORAN, Defendant-Appellant.	

OBJECTIONS TO APPLICATION FOR REHEARING

NOW COMES the above defendant-appellant by his attorneys, the STATE APPELLATE DEFENDER OFFICE, by KATHLEEN M. CUMMINS, and objects to the application for rehearing filed by the Attorney General in this case, and states in support of his objections the following:

1. On October 4, 1977, this Honorable Court issued in this cause an opinion reversing the trial court and ordering the immediate discharge of Harold Doran, an order which was carried out the following day. *People v Doran*, Mich No. 58698 filed October 4, 1977.

2. The above opinion held that where extradition of an accused fugitive (based on an untried charge) is sought "... It is determined . . . that Michigan may not arrest, detain and render to the demanding state a person accused of a crime unless that state submits an indictment or a judicial determination of probable cause or adequate factual affidavit(s) reflecting probable cause.

Where there has been no indictment or judicial determination of probable cause in the demanding state, a requirement that the demanding state's affidavit set forth facts which support a determination of probable cause safeguards citizens and other persons found in the asylum state against abuse of the extradition process."

3. On October 24, 1977, the Michigan Attorney General's office filed an application for rehearing of the above decision. The Bay County prosecutor's office, an original party to this action throughout its extensive history, did not join in the application for rehearing.

4. Appellant contends that rehearing should be denied for the following reasons:

A. The Attorney General should not be permitted to intervene, at this late juncture, in an appeal in which he has made no previous effort to participate. Appellant is aware that Michigan statute, MCLA 14.101; MSA 327.41 authorizes the Attorney General to intervene "in any action heretofore or hereafter commenced in any court of the state whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state."

However, it is clear that the right of the Attorney General to intervene is no greater than that of any other party to the litigation. *Gremore v People's Community Hospital Authority*, 8 Mich App 56, 59 (1967). The Attorney General's office failed to participate in this appeal at any stage. In fact, when the Attorney General's office was subpoenaed in one of the habeas corpus hearings held in this matter in Bay County Circuit Court, the assistant attorney general who appeared, moved to quash the subpoena and stated:

"MR. PADILLA: . . . In addition, Your Honor, we would like to point out to the Court that we are not proper parties to this action. I'm speaking of the verified complaint which is Bay County Circuit Court file number 76-207. We are not proper parties to the complaint. Nowhere does that complaint allege any sort of action, inaction, wrongdoing, duty, or anything. It doesn't mention the Attorney General, other than putting his name on the heading." (p. 58, transcript of hearings held April 8 and 9, 1976 in Bay County Circuit Court)

Obviously, the Attorney General's office had notice of the pendency of this matter since the habeas corpus stage, but deliberately declined involvement.

The Attorney General's office did not oppose either the application for leave to appeal or the petition for writ of habeas corpus. The Attorney General did not oppose Appellant's application for leave to appeal in this Court, did not file a brief and did not appear for oral arguments. An issue on appeal is abandoned if the party does not brief that issue. *Mitcham v Detroit*, 355 Mich 182 (1959). Since the Attorney General's right to participate in an appeal is no broader than that of a party, his failure to file a brief constitutes a waiver of that right. See *Anchor Bay Citizens v Board of Education*, 55 Mich App 428, 430-431 (1974). This Court should not condone this eleventh hour intervention.

B. Even if this Court should find that the Attorney General's office had standing to move for rehearing, the arguments raised in his application are without merit.

1. The Attorney General contends that this Court's decision failed to consider a number of cases contrary to the position taken in the opinion. The Attorney General intimates

that because these cases were not cited in the *Doran* opinion, they were not considered by this Court, a proposition which is patently absurd. This Court was supplied with ample authority contrary to the position taken in Appellant's brief and in the opinion.

Specifically, the Attorney General alleges that this Court failed to consider three cases: *In Re Otis Golden*, 65 Cal App 3d 789, 135 Cal Rptr 512 (1977); *DeGenna v Grasso*, 413 F Supp 427 (D Conn, 1976) and *Garrison v Smith*, 413 F Supp 747 (ND Miss, 1976). Even assuming that failure to consider three cases could be a pivotal factor in this Court's decision, the three above cases cannot pretend to attain pivotal stature in the *Doran* case.

Appellant at no time contended that his brief espoused a majority view on whether, to justify rendition, affidavits and complaints supporting a requisition had to reflect a prior judicial determination of probable cause. On the contrary, Appellant was quite careful to point out in his brief that the cases had polarized around this issue (pp 9, 10, Appellant's brief) and urged that the *Kirkland** view was the newer and more intelligent (but not the most widely adopted) standpoint (pp 11-12, Appellant's brief).

In fact, the traditional rationales against requiring probable cause were set out in some detail on pages 10 to 11 of Appellant's brief. *In Re Otis Golden, supra*, is a typical example of the traditional view and its consideration by this Court would have been, as best, cumulative.

DeGenna v Grasso would not have been pertinent to the *Doran* case because *DeGenna* involved a completely different issue (whether the asylum state governor, in issuing a rendition warrant, was usurping a judicial function).

**Kirkland v Preston*, 385 F2d 670 (CADC, 1967).

Garrison v Smith, far from being excluded from this Court's was cited and paraphrased in Appellant's brief (pp 10, 11).

2. The Attorney General also maintains that this Court failed to consider United States Supreme Court summary affirmances of the *Golden* and *DeGenna* decisions. *Golden v California*, 46 USLW 3185, 22 CLR 4014 (October 4, 1977) (dismissing appeal for want of jurisdiction and denying cert); *Carino v Grasso*, 426 US 913, 96 S Ct 2617, 49 L Ed 2d 368 (1976) (affirming). The Attorney General takes the position that these two summary orders reflect United States Supreme Court endorsement of the proposition that a probable cause showing is not a constitutional prerequisite to rendition. This is wrong. The Attorney General quotes, out of context, a portion from a passage in *Mandel v Bradley*, US, 97 S Ct 2238, 2240; 50 L Ed 2d 199, 205 in support of his contention that a summary affirmation means that the United States Supreme Court has adopted the holding and rationale of the Court below. The entire passage reads as follows:

"[2a, 3] The District Court erred in believing that our affirmances in *Salera* adopted the reasoning as well as the judgment of the three-judge court in that case and thus required the District Court to conclude that the early filing date is impermissibly burdensome. *Hicks v Miranda*, 422 US 332, 45 L Ed 2d 223, 95 S Ct 2281 (1975), held that lower courts are bound by summary actions on the merits by this Court, but we noted that '[a]scertaining the reach and content of summary actions may itself present issues of real substance.' *Id.*, at 345 n 14, 45 L Ed 2d 223, 95 S Ct 2281. Because a summary affirmation is an affirmation of the judgment only, the rationale of the affirmation may not be gleaned solely from the opinion below.

"When we summarily affirm, without opinion . . . we affirm the judgment but not necessarily the reasoning

by which it was reached. An unexplicated summary affirmance settles the issues for the parties, and is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.' *Fusari v Steinberg*, 419 US 379, 391-392, 42 L Ed 2d 521, 95 S Ct 533 (concurring opinion of the Chief Justice.)

"[4] Summary affirmances and dismissals for want of a substantial federal question without doubt reject the specific challenges presented in the statement of jurisdiction and do leave undisturbed the judgment appealed from. They do prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions. After *Salera*, for example, other courts were not free to conclude that the Pennsylvania provision invalidated was nevertheless constitutional. Summary actions, however, including *Salera*, should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved.

"Here, the District Court ruled that legally 'Salera decides the issue before us, and as the latest expression of the Supreme Court, we are bound to follow it.' J.S. 12a. The precedential significance of the summary action in *Salera*, however is to be assessed in the light of all of the facts in that case; and it is immediately apparent that those facts are very different from the facts of this case." 53 L Ed 204-205. (Emphasis added)

This case clearly does not stand for the principle that dismissal of an appeal for want of jurisdiction as in *Golden* by the Supreme Court amounts to a disposition on the merits of the appeal. Even if *Golden* were an affirmance, and if this Court could have considered it (which would have involved some

acrobatics since the summary affirmance was issued the same date as the opinion in *Doran*) such an affirmance clearly upholds only the judgment of the lower court and does not necessarily incorporate the legal reasoning of that court.

If the precedential significance of a summary action is to be assessed in light of all the facts in that case, it is clear that the affirmance in *DeGenna* would have no significance in the *Doran* case. As noted previously, the question presented in *DeGenna* was different and moreover, the requisition in that case was supported by a grand jury indictment, a fact which totally distinguishes that case from *Doran*.

Consequently, it is clear that this Court's failure to cite the above cases in its opinion was not a crucial omission. This Court also failed to cite *Montague v Smedley*, 557 P2d 774 (1976), a decision of the Alaska Supreme Court which Appellant's counsel presented to the Court at oral arguments and which, on facts very similar to the case at bar, adopted the *Kirkland* approach. This omission did not prevent this Court from taking a position almost identical to the holding of the Alaska Supreme Court.

WHEREFORE, Appellant respectfully requests that rehearing be denied.

Respectfully submitted,

STATE APPELLATE DEFENDER
OFFICE

By: KATHLEEN M. CUMMINS
Assistant Defender

Third Floor, North Tower
1200 6th Avenue
Detroit, Michigan 48226
256-2814

Dated: November 1, 1977

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

KATHLEEN M. CUMMINS, being first duly sworn, deposes and says she has read the foregoing and it is true, to the best of her knowledge and belief.

(s) Kathleen M. Cummins

Subscribed and sworn to before me this 1st day of November, 1977.

(s) Lavenia Appling
Notary Public, Wayne County, Michigan
My commission expires: May 20, 1981

ORDER DENYING REHEARING

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 29th day of November in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable

THOMAS GILES KAVANAGH,
Chief Justice,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff-Appellee,
v
HAROLD WILLIAM DORAN,
Defendant-Appellant.

CoA: 28507

LC: 76-207

In this cause an application for rehearing is considered and is hereby DENIED.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 29th [SEAL] day of November in the year of our Lord one thousand nine hundred and seventy-seven.

Corbin R. Davis /s/
Deputy Clerk